

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

732 OFFICE

BRIEF FOR APPELLANT

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 20031

LAWRENCE STURGILL

Appellant,

v.

JOHN L. LEWIS, JOSEPHINE
ROCHE, AND HENRY G. SCHMIDT
Trustees of the United Mine
Workers of America
Welfare and Retirement Fund

Appellees

Appeal From The United States District Court
For the District of Columbia

United States Court of Appeals
for the District of Columbia Circuit

FILED MAY 6 1966

Nathan J. Paulson
CLERK

RONALD D. HAGGART
National Theatre Bldg.
Washington, D.C.

BYRON K. WELCH
1366 National Press Bldg.
Washington, D.C.
Attorneys for Appellant

(i)

QUESTION PRESENTED

Did the Court have cause under law to try the issue and decide the question of whether an applicant for a pension to the United Mine Workers of America Pension Fund had satisfied the requirements for such a pension when the trustees of the fund had denied the application on the basis of lack of the requisite number of years of service as a miner but after filing of the complaint the claim that there was not the requisite service was dropped and the claim that the applicant had not reached the required age had been advanced as the sole basis for denial.

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BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to the provisions of 28 U.S.C.

STATEMENT OF THE CASE

This was an action by a resident of Kentucky against the Trustees, United Mine Workers of America, Welfare and Retirement Fund of 1950, for the recovery of pension payments of about \$100.00 per month which have accrued from January 1, 1953 to date, and for a declaratory judgment against the appellee Trustees^{1/} that appellant was entitled to receive from said Welfare and Pension Fund a pension of \$100.00 per month continuing during the remainder of appellant's life, and for costs and disbursements, and a reasonable attorney's fee. The three appellees were Trustees of the United Mine Workers of America Welfare and Retirement Fund and maintain a place of business in Washington, D.C., for administration of the Retirement Fund. The Retirement Fund is an irrevocable trust under and subject to the provisions of Section 302 of the Federal Labor Management Relations Act of 1947 as amended 29 U.S.C. 186(c). In accordance with the provisions of the National Bituminous Coal Wage Agreement of 1950, entered into between the Coal Mining Operators of the United States and the UMW, a portion of said trust fund is intended for and devoted to the payment of pensions on retirement to qualified employees of the coal mining industry.

^{1/} The appellee will hereinafter be referred to as both "Appellee" and "Trustees".

Appellant claimed that he was born December 1, 1887, in Kentucky; that he had been for more than 25 years a member in good standing of the United Mine Workers of America, and of Local Union No. 8336, District 30 of the UMW of America; that he was engaged in active employment in the coal industry from 1912 through December 1952 when he retired; and that because of his age and his more than 20 years employment in the coal industry, appellant became entitled upon application to receive a pension of \$100.00 a month from the Retirement Fund.

Appellant submitted his first application to the Fund on January 9, 1953. At that time Resolution 10, adopted on April 5, 1950 by the Trustees of the Fund, was in effect. A second amended application was received by appellee Trustees from appellant on April 2, 1953. A review of appellant's claim was made by the Fund in early 1959, and by letter dated March 27, 1959, his claim was finally denied on its merits. The action below was filed on October 11, 1961.

The sole basis given for denying appellant's claim was that he had failed to establish:

"(1) Twenty years classified service in the coal industry within the thirty-year period preceding your application."

This administrative determination of the trustees was erroneously based on the belief that the eligibility of the appellant would have to

be found under Resolution 30 which did not become effective until January 29, 1953, about a month after appellant had filed his application. His eligibility should have been based on Resolution 10 which was in effect when appellant filed his application and which provides that any service in the Coal Mines prior to retirement age may be counted.

By a stipulation prior to trial herein appellees however dropped the defense that appellant had not had sufficient service in the Mines and agreed that the only thing to be tried would be the question of whether or not the appellant had reached the required age of 60 years prior to his retirement in December of 1952. The trustees never considered and passed on the question of whether or not the appellant satisfied the age requirement under Resolution 10 and this element only appeared in the case in appellees' pre-trial statement of November 16, 1962.

Trial was had before the Court on May 10, 1965 on the sole issue stipulated to be whether or not the appellant had attained the age of 60 by the time he retired. At the end of the trial the Court orally ruled in favor of the appellant and requested counsel to submit findings of fact and conclusions of law.

Before a judgment was signed appellees submitted a Motion to Amend Findings of Fact, and To Vacate Judgment on June 2, 1965 and a

Motion to Reopen Record on June 7, 1965. These motions were opposed by the appellant but without oral argument the Court granted the motion to reopen the record and hold further hearing on June 17, 1965. The Court stated at the second hearing that the further hearing had been granted because of claims of fraud by the trustees.

Appellant filed a Motion to Clarify Order and for Further Relief on July 19, 1965. This motion was denied by the Court on July 23, 1965 and the matter came on for a second hearing on October 4, 1965. At the end of this second hearing the Court ruled for the appellees, finding that the appellant had not reached the age of 60 years when he retired. Findings of Fact and Conclusions of law and an Order were signed by the Court on November 12, 1965.

Attorney Richard L. Merrick represented the appellant herein until he was required to withdraw because of illness on January 15, 1964. Attorney Carl H. Imlay represented appellant from February 12, 1964 until the Judgment was signed but he could not represent appellant on this appeal since he had in the meantime been appointed to a position with the Administrative Office of the United States Supreme Court.

STATEMENT OF POINTS ON APPEAL

1. The Court below erred in granting a trial as to whether or not appellant had reached the required age of 60 years by December of 1952.

The Court should have limited its consideration to whether or not the trustees' denial of the requested pension on a failure to meet the years of service requirements of Resolution 30 was arbitrary and capricious.

2. The Court below erred in failing to use the standards by which the trustees would have been governed when it tried the issues of appellant's age.

3. The Court below erred in permitting a further hearing based on appellees' so called discovery of fraud after the Court's oral ruling for appellant on May 10, 1965 when in fact no fraud was found by the Court.

4. The lack of an administrative hearing and the reopening of the case for further evidence prevented proper discovery and a complete opportunity to rebut the evidence submitted by the appellees on the question of appellant's age.

SUMMARY OF ARGUMENT

The Court below did not have legal authority to consider the question of appellant's age since the trustees had not raised this question in the administrative proceedings. The Court, in fact, so found in an oral opinion rendered in the first hearing in this case on May 10, 1965. A second hearing, however, was improperly permitted by the Court apparently because of a suspicion of fraud even though the elements of fraud were never found and did not exist. The second

hearing was a trial by the Court on the question of the appellant's age. Even assuming arguendo, that such a hearing was proper, the Court should have been bound by the criteria for establishing the age requirement promulgated by the trustees in Resolution No. 10.

Permitting the new hearing and permitting the issue of age to be raised some twelve years after appellant had applied for his pension, made it impossible for the appellant to properly assist his counsel and rebut the evidence introduced by appellees.

ARGUMENT

I

THE COURT WAS WITHOUT LEGAL AUTHORITY TO CONSIDER THE QUESTION OF THE APPELLANT'S AGE SINCE THE TRUSTEES HAD NOT RAISED SUCH QUESTION IN THE ADMINISTRATIVE PROCEEDINGS.

The Trust Indenture of the United Mine Workers of America Welfare and Retirement Fund of 1950, created pursuant to the provisions of the Labor Management Relations Act, 29 U.S.C. 186(c), provides:

"Subject to the stated purposes of this Fund, the Trustees shall have full authority, within the terms and provisions of the 'Labor-Management Relations Act, 1947,' and other applicable law, with respect to questions of coverage and eligibility...and all other related matters."

Pursuant to these provisions, the trustees made an investigation and took evidence after the appellant made application for a pension.

The application was finally denied by the trustees and their letters to the appellant of March 27, 1959 gave as a reason for the denial:

"...you have failed to establish proof of meeting the following Trust Fund requirement:

(1) Twenty years classified service in the coal industry within the thirty-year period preceding your application." (Pl. Exh. 4)

In denying the appellant's application for a pension, the trustees relied solely on the provisions of their Resolution 30 and the failure to meet the requisite service requirement. 2/ and 3/

In the first hearing on this matter, the Court in spite of objections by counsel for appellant, (1st Tr. 3,4) decided to hear evidence for the first time on the question of whether the appellant had reached 60 years of age when he applied for his pension. This new matter had never been decided by the trustees and was first introduced into the case at pretrial. It is true that in the appellees' answer to the complaint, they "denied that the appellant was 73 years of age" (Answer, Paragraph 2), but whether

2/ Prior to the trial of this case, it was conceded by counsel for both parties that Resolution 10 of the Trust Fund was to be controlling rather than Resolution 30. (See 1st Tr. 88).

3/ The reference to "1st Tr." hereinafter refers to the transcript of the hearing on May 10, 1965 and "2nd Tr." refers to the hearing of October 4, 1965.

appellant was 73 years of age was immaterial. It was not until November 16, 1962, in their Pre-Trial Statement that the appellees claimed appellant did not meet the age requirements for the first time (Pre-Trial Statement of November 19, 1962, Page 2). This was almost ten years after appellant had made his application for a pension in January of 1953.

It is well established that the scope of judicial review in an appeal from an administrative decision, such as in this case, is limited to a review of the administrative record as to whether or not the trustees have acted arbitrarily or capriciously in rejecting a claim. Danti v. Lewis, 114 App. D.C. 105, 312 F.2d 345(1962). Kosty v. Lewis, 115 App. D.C. 343, 319 F.2d 744(1963), cert. denied, 375 U.S. 964(1964). The review to be afforded in a case such as this is analogous to the review permissible in cases involving administrative decisions of branches of the United States Government. In employee discharge cases for example, and this general rule applies in review of other types of administrative actions, it is well settled law that the only function of the Courts is to insure compliance by the agency involved with the applicable statutes and regulations and to determine whether or not the action was arbitrary and capricious. Green v. Baughman, 100 App. D.C., 187, 243 F.2d 610(1957), Boylan v. Quarles 98 App. D.C. 337, 235 F.2d 834(1956).

If this were not so, it would mean that the Courts could interfere at will in the discretion specifically granted to the trustees and to the trustees alone by the Trust Indenture.

Permissible review was well defined by the Court in Kennett v. United Mine Workers, 183 F.Supp. 315, at 318, affirmed without opinion, D.C. Cir., No. 15892.

"...in such an action the Court will review the legal rights of the plaintiff and determine whether any erroneous decision has been reached by the trustees on questions of law. It will also review, to a limited extent, decisions of the trustees on questions of fact; certainly whether there is any substantial evidence sustaining the decision on questions of fact.

"The Court would not go as far as to review the question whether their decision is contrary to the weight of evidence, but it will determine whether there is substantial evidence in the record as a whole sustaining their finding. Finally, and it is not denied that this may be done, the Court will review the question whether the action of the trustees is in any way arbitrary or capricious."

It was therefore error for the Court to permit the introduction of the issue of age at the time the case was to be heard and further error to undertake to try the matter on the introduction of evidence which had not been a part of the administrative proceeding.

II

THE OPINION OF THE COURT RENDERED IN THE HEARING OF
MAY 10, 1965, WAS CORRECT AND SHOULD
HAVE BEEN SUSTAINED.

After the hearing on May 10, 1965, in which the Court considered evidence relating to appellant's age, the Court announced an oral opinion from the bench finding that the appellant should have been given a pension (1st Tr. 88-90). The Court stated:

"...I hold that the defense cannot change its theory of the case on facts that have come into the case after it has made its decision. They have got to rest on the record as it was at the time that the decision was made. Accordingly, this affirmative defense that the plaintiff at the time that his case was considered was not at the proper age, I do not think is material to the case." (1st Tr. 88)

Although it is the appellant's contention that the objection to the hearing on the question of age should have been sustained in the first instance, the ruling by the Court following the hearing of May 10, 1965 was correct and the finding and conclusions reached should have disposed of the case at this point.

However, before the Court signed its findings of fact and conclusions of law, the appellees filed motions seeking further hearing and reconsideration. In substantiation of these motions, allegations were made which amounted to an accusation of fraud and a claim of newly

discovered evidence. Acting on these allegations on July 17, 1965, the Court granted a new hearing and in spite of objections by counsel for the appellant, the matter again came on for further hearing on October 4, 1965. At this hearing, further evidence was introduced relating to appellant's age which resulted in the Court finding that the appellant had not met the requirement of age as contained in Resolution No. 10, which sets forth requirements of eligibility for pensions and dismissed the appellant's complaint.

In spite of the fact the Court had stated that the new hearing had been granted because of the allegations of fraud made by the appellees, (2nd Tr. 15) the Court made no findings of fraud to justify the granting of a new hearing. On the contrary, the Court stated "...that the Plaintiff listed an incorrect age and date of birth in his applications..." (Finding of Fact and Conclusions of Law, filed November 12, 1965, p. 6).

In the absence of a finding of fraud by the Court in this new hearing, it was completely without legal justification to overrule its previous decision issued from the bench in the hearing of May 10, 1965. If the Court found in the first hearing that the issue of age was not relied upon in the administrative denial of appellant's claim and that it was raised too late as a defense to this suit, thereby finding

for the appellant, how could the Court hold a rehearing and retry the case on the issue of age?

At that late date, July of 1965, twelve years after the original application for a pension was filed, the trustees had finally claimed to have found evidence showing that the appellant was not of the requisite age. (Appellees' Opposition to Plaintiff's Motion to Clarify, paragraph 1).

III

IN THE ABSENCE OF A FINDING OF FRAUD THE EVIDENCE
TENDERED BY THE APPELLEE SHOULD NOT HAVE
BEEN ACCEPTED AS SUFFICIENT REASON FOR
ORDERING A NEW HEARING.

Newly discovered evidence cannot be merely impeaching in character, and must be sufficient if proved, to require a different result in the verdict before it warrants a new hearing. Edgar v. Finley, 312 F.2d 533, 537(C.A. 8, 1963); Chemical Delinting Co. v. Jackson, 193 F.2d 123(1951).

The majority of the evidence at the rehearing dealt with records having bearing on the army service of the appellant which only had a collateral bearing on the appellant's age. Also, this evidence was a surprise to the attorney for the appellant and he did not have an opportunity to investigate this new evidence.

The second hearing went completely beyond the scope of permissible review by the Court in that it did not deal with a finding of the trustees at all but was a new hearing on a completely new issue never decided or even before the trustees.

This clearly violates the finding in Danti v. Lewis, Supra at 349, where the Court stated:

"We hold, further, that in this action to review the trustees' decision...the District Court's duty was to determine whether the material then before the trustees was sufficient to support their decision..."

IV

EVEN IF IT WERE PERMISSIBLE FOR THE COURT TO UNDERTAKE AN EXAMINATION INTO THE APPELLANT'S AGE IT SHOULD HAVE BEEN BOUND BY THE STANDARD AND CRITERIA WHICH GOVERN THE DECISIONS OF THE TRUSTEES FOR WHICH THE COURT WAS SUBSTITUTING ITSELF.

As to age, the criteria set forth in Resolution 10 are plain and unequivocal:

"II. PROOF OF ELIGIBILITY

A. Age

1. Whenever possible the age of applicant will be verified by the Social Security Records." (Def. Exh. 2)

The Social Security Records in this case are perfectly clear and they verified appellant's age by establishing appellant's birth date as being December 1, 1887. (Pl. Exh. 1 and 10). This birth date makes

appellant eligible for his pension according to the requirements of Resolution No. 10. (Def. Exh. 2) The trustees violated their own Resolution in denying appellant's age qualification and the Court violated the Resolution by ignoring the criteria set up by said Resolution. A decision by the trustees that appellant had not reached the required age would have been arbitrary and capricious for not complying with a Resolution which the trustees themselves had promulgated. The Court's decision was equally erroneous in ignoring these criteria and no reason is given for the Court's failure to find the Social Security records dispositive.

V

THE MANNER IN WHICH THE NEW HEARING WAS PERMITTED
AND THE DELAY IN RAISING THE ISSUE OF AGE RE-
SULTED IN THE IMPOSSIBILITY FOR THE APPELLANT
TO HELP HIS COUNSEL SECURE EVIDENCE TO REBUT
THAT INTRODUCED BY THE APPELLEES.

By the time of the Court hearings herein, the appellant, because of his advanced age, sickness and poor memory and because of his lack of education, was completely incapable of helping to prove his age or rebut the evidence of the trustees. (2nd Tr. 101). The Court recognized the incapacity of the appellant and stated:

"I think cross examining this poor old fellow on credibility won't give you anything. He can't remember obviously." (2nd Tr. 97)

Appellant's confusion and lack of memory are shown throughout his testimony at the second hearing. He there claimed to have used an M-1 rifle, and to have been sent to Normandy in World War I, obvious anachronism. (2nd Tr. 80-106) The appellant himself best described his mental condition when he said:

"I don't remember. I can't remember much. My mind comes and goes." (2nd Tr. 101)

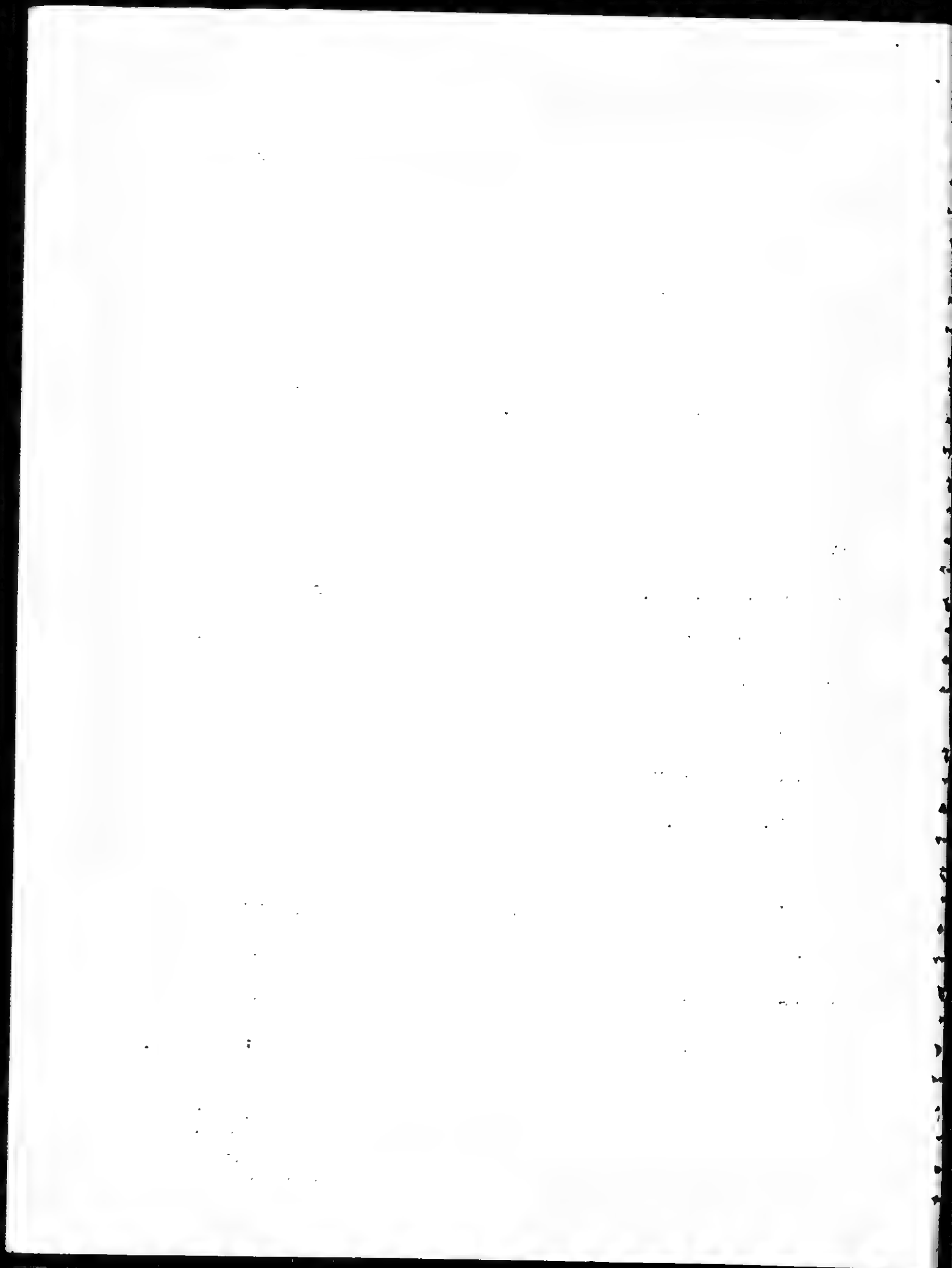
Appellant was further unable to submit to the Court certain affidavits relating to his age which he would have been permitted to submit at the administrative level if an administrative hearing had been held. (Pl. Exh. 13 and 14, not admitted in evidence)

Appellant herein was entitled to an administrative hearing on the question of his age by the trustees at a time when he was capable of participating fully therein. The hearing before the Court where restrictive rules of evidence were applied was in violation of the appellant's rights.

CONCLUSION

It is respectfully submitted, that at this late date, for the reasons herein set forth, justice requires that this Court enter an order reversing the judgment of the lower Court and requiring that appellees pay to appellant his pension retroactive to the date of his application therefor.

Ronald D. Haggart
Byron K. Welch
Attorneys for
Appellant



CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was mailed,
postage prepaid, this _____ day of May, 1966, to Edward L. Carey,
Attorney for Appellees, 821-15th Street, N.W., Washington, D.C.

BRIEF FOR APPELLEES AND APPENDIX

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,031

LAWRENCE STURGILL, *Appellant*

v.

JOHN L. LEWIS, JOSEPHINE ROCHE AND HENRY G. SCHMIDT,
TRUSTEES, UNITED MINE WORKERS OF AMERICA WELFARE
AND RETIREMENT FUND OF 1950, *Appellees*

Appeal from the United States District Court for the
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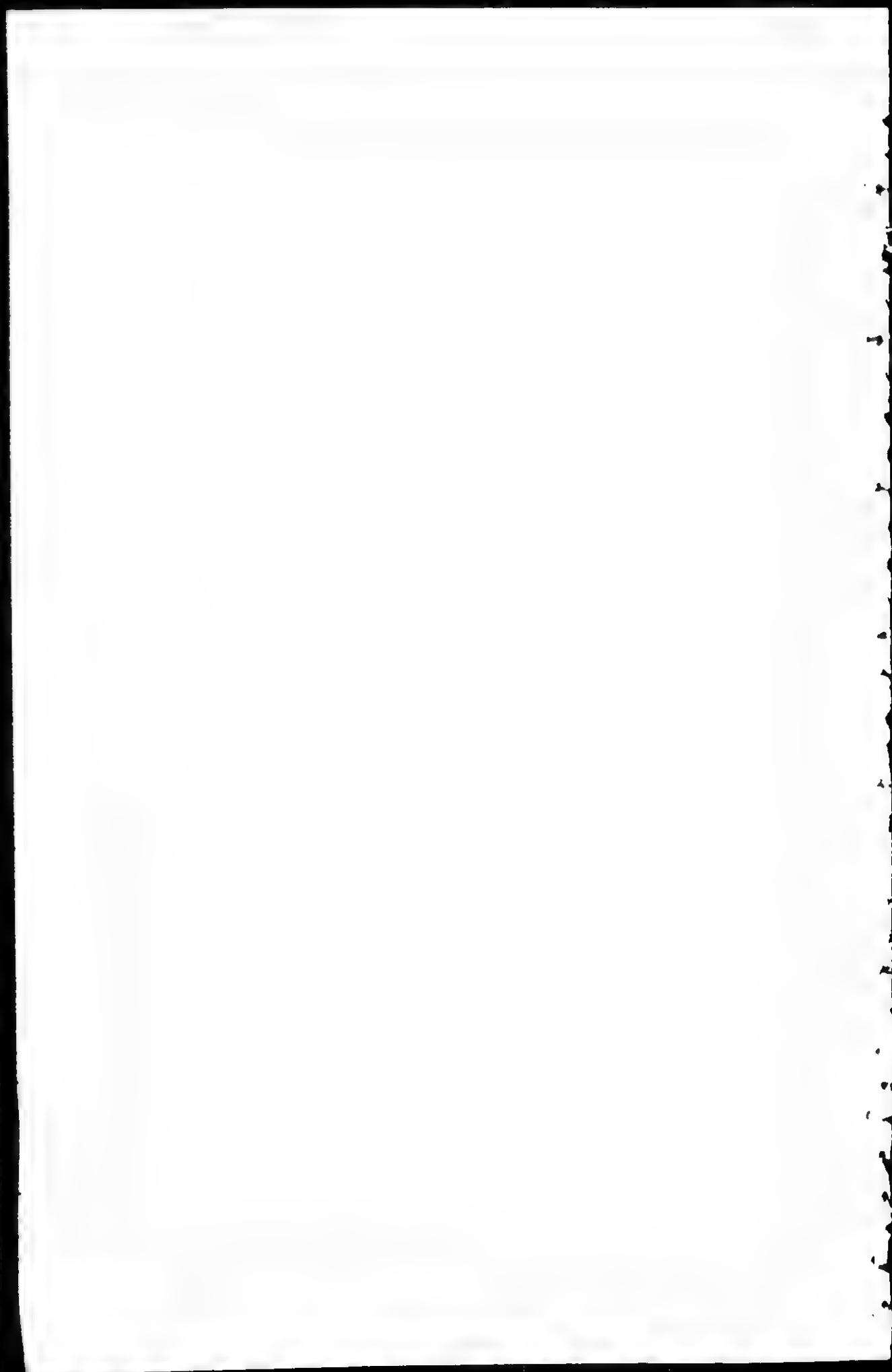
EDWARD L. CAREY

VAL J. MITCH

JOSEPH T. McFADDEN

Attorneys for Appellees

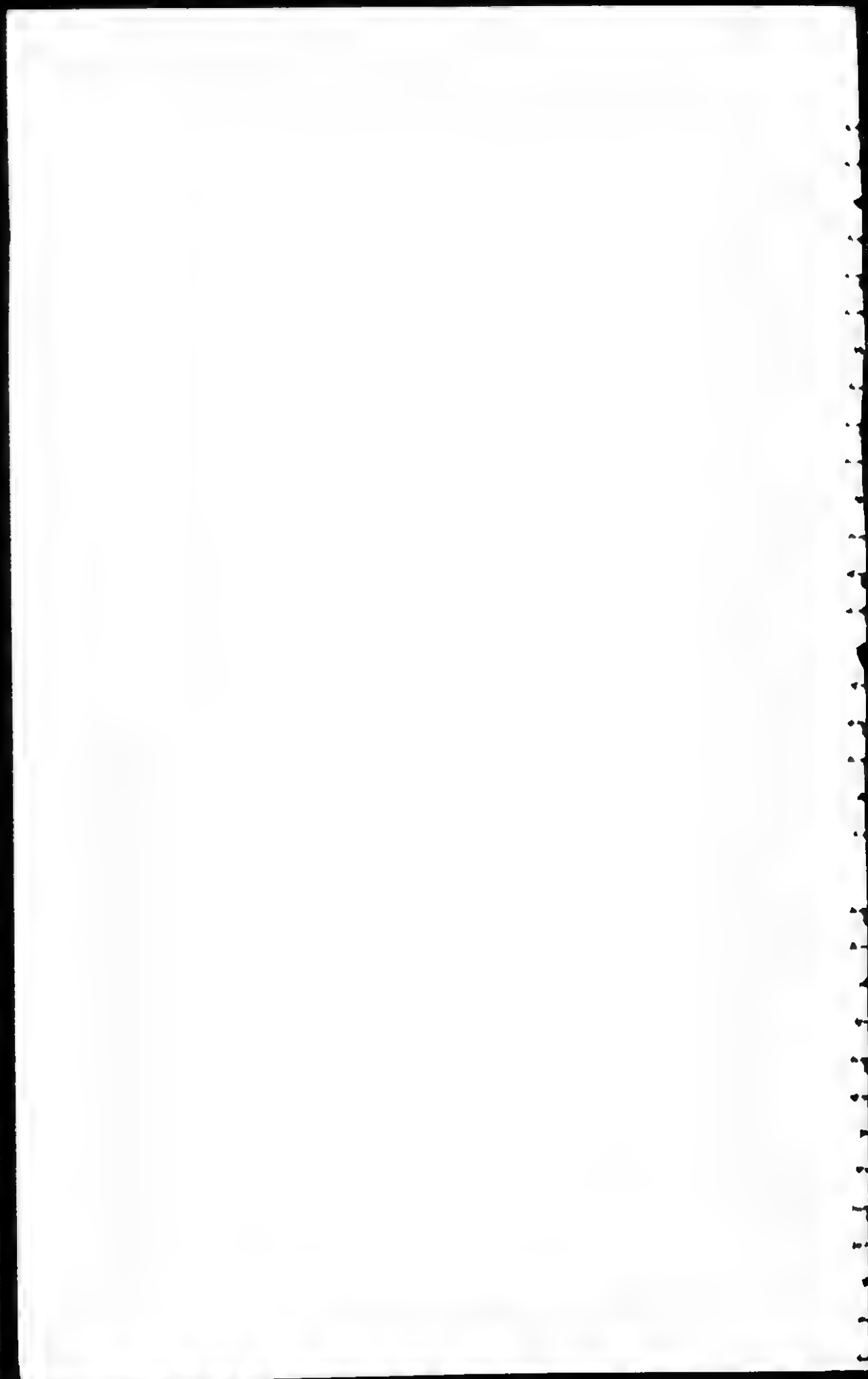
821 Fifteenth Street, N. W.
Washington, D. C. 20005



STATEMENT OF QUESTIONS PRESENTED

In the opinion of Appellees, the question is:

Was Appellant entitled to a pension from the United Mine Workers of America Welfare and Retirement Fund of 1950, where the evidence conclusively established that Appellant had not met the requirement of age as contained in the resolution enacted by the Trustees, setting forth requirements of eligibility for pensions.



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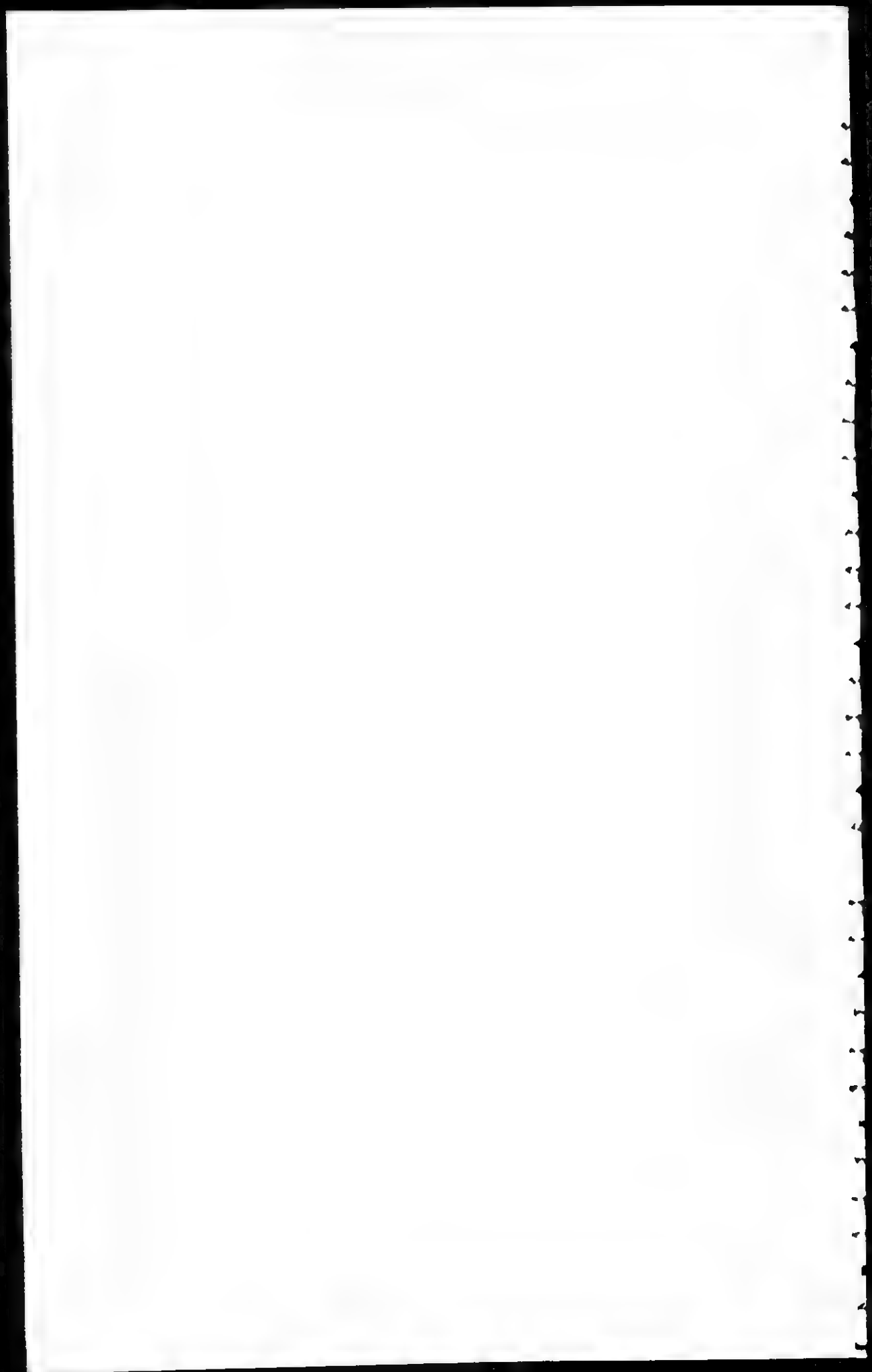
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IN THE
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No. 20,031

LAWRENCE STURGILL, *Appellant*

v.

JOHN L. LEWIS, JOSEPHINE ROCHE AND HENRY G. SCHMIDT,
TRUSTEES, UNITED MINE WORKERS OF AMERICA WELFARE
AND RETIREMENT FUND OF 1950, *Appellees*

Appeal from the United States District Court for the
District of Columbia

BRIEF FOR APPELLEES

COUNTERSTATEMENT OF THE CASE

This is an action by Appellant, an applicant for a pension, seeking status as a beneficiary of a trust. The only issue involved herein, a factual one, is the age of the applicant.

Appellees are Trustees of the United Mine Workers of America Welfare and Retirement Fund of 1950, an irrevocable trust, created by its settlors, Coal Operators signatory to the National Bituminous Coal Wage Agreement of 1950 and a labor union, the United Mine Workers of America.¹ The Trust Indenture is set forth in the National Bituminous Coal Wage Agreement of 1950 (A. 49-52). It provides in part, that the Board of Trustees shall have the following powers:

Subject to the stated purposes of this Fund, *the Trustees shall have full authority*, within the terms and provisions of the "Labor-Management Relations Act, 1947," and other applicable law, *with respect to questions of coverage and eligibility*, priorities among classes of benefits, amounts of benefits, methods of providing or arranging for provisions for benefits, investment of trust funds, *and all other related matters.* (Emphasis supplied) (A. 51).

¹ Appellant concedes that Appellees are Trustees of an irrevocable trust created pursuant to the Labor-Management Relations Act, 1946, as amended, 29 U.S.C. § 186 (c) (5), and that the Trustees are empowered by the Trust indenture with full authority with respect to questions of coverage and eligibility and all other related matters. See Appellant's Brief pages 2 and 7.

The Supreme Court of the United States, in concluding that this Trust was not an asset or property of the Union, carefully pointed out that there is an "express provision" that "this Fund is an irrevocable trust created pursuant to Section 302(c) of the 'Labor-Management Relations Act, 1947.' " *Lewis v. Benedict Coal Corporation*, 361 U.S. 459 at 464, 465, 80 S. Ct. 489, 4 L. Ed. 2d 442. That this Fund is a trust is manifested by the intention of the parties who created it as contained in the Trust Indenture. The Labor Management Relations Act, 1947 as amended requires such a fund to be a trust. Judicial decisions have determined that this Fund is a trust. *Lewis v. Quality Coal Corporation*, 7th Cir., 270 F. 2d 140; *Lewis, et al. v. Quality Coal Corporation*, 7th Cir., 243 F. 2d 769, cert. den. 355 U.S. 882; *Ruth v. Lewis, et al.*, (USDC D.C.) 166 F. Supp. 346; *Van Horn v. Lewis, et al.*, (USDC D.C.) 79 F. Supp. 541; *Yonce v. The Miners Memorial Hospital Ass'n., et al.*, (USDC WD Va.) 161 F. Supp. 179 at 186; *Barlow v. Roche, et al.*, (Man. Ct. App. D.C.) 161 A. 2d 58, App. den. D.C. Cir. No. 15,951; *Hobbs v. Lewis, et al.*, 197 Tenn. 44, 270 S.W. 2d 352; *Wilder v. United Mine Workers of America Welfare and Retirement Fund, et al.*, 346 S.W. 2d 27 (1961); *Eamsey, et al. v. United Mine Workers of America, et al.*, (USDC E.D. Tenn.) 222 F. Supp. 717 (1961).

Pursuant to this authority, and as experience dictated, the Trustees enacted resolutions setting forth requirements of eligibility for pensions.²

A chronological presentment of this case, while delaying the explanation of the only issue, will aid in clarifying the manner in which it arose.

(a)

Pension Eligibility Requirements

Shortly after the creation of this Trust, the Trustees enacted Resolution 10, setting forth requirements for eligibility for pensions (A. 52-56).³ It provided in part:

I. ELIGIBILITY

An applicant shall be eligible for a pension if he meets the following requirements:

A. Attained the age of sixty (60) years or over at the time of his application for pension.

• • •

D. Completed twenty (20) years service in the Coal Industry in the United States, its possessions or territories, or the Dominion of Canada; • • •

II. PROOF OF ELIGIBILITY

A. Age.

1. Wherever possible the age of the applicant will be verified by the Social Security Administration records.
2. Applicant shall be required to submit documentary evidence of probative value to establish his age in cases where the Social Security Adminis-

² Trust Funds are derived principally from royalties on coal produced for use or for sale as provided in the Trust Indenture. Tied as this Trust is to the fluctuating fortunes of the coal industry, flexibility to revise pension eligibility requirements is especially necessary to the operation of this Trust. *Kosty v. Lewis*, 115 U.S. App. D.C. 343, 347, 348, 319 F. 2d 744 (1963).

³ Resolution 10 was enacted on April 5, 1950.

tration records do not verify his age as stated on the application for pension.

On January 28, 1953, Resolution 29 was enacted by the Trustees which repealed Resolution 10, effective January 29, 1953. On the same day Resolution 30 was enacted which provided in part:

I. ELIGIBILITY

An applicant shall be eligible for a pension if he has:

- A. Attained the age of sixty (60) years or over at the time of his application for pension.
- B. Completed twenty (20) years service in the coal industry in the United States, . . . within the twenty-five (25) year period immediately preceding his application for pension; * * *

* * *

II. PROOF OF ELIGIBILITY

A. Age.

- 1. Wherever possible the age of the applicant will be verified by the Social Security Administration records.
- 2. Applicant shall be required to submit documentary evidence of probative value to establish his age in cases where the Social Security Administration records do not verify his age as stated on the application for pension.

* * *

On March 13, 1953, the Trustees enacted Resolution 31, which amended Resolution 30 by striking the words twenty-five (25) years' service and replacing it with thirty (30) years' service in § 1 B. Resolution 32 enacted on May 12, 1953 perpetuated these changes and retained the provision that an applicant at the time of his application for a pension, must have attained the age of sixty (60) years. See *Kosty v. Lewis, supra*.

(b)

Proceedings Before the Trustees

On January 9, 1953, the Trustees received a pension application from Appellant bearing date of December 6, 1952 (A. 57). In response to question five (5) on the application, Appellant stated his date of birth as June 25, 1892 (A. 57). On the last page of the application was an authorization, signed by the applicant, authorizing the Social Security Administration to make available to the Trust Fund information contained in the applicant's social security file (A. 60).⁴ His social security number appeared on the same page.

As is customary, the authorization was sent to Baltimore to the offices of the Social Security Administration (A. 30, 31). A transcript, which must be interpreted, was returned. Lawrence Sturgill's date of birth was listed as 7/96, that is, as having been born in July, 1896. On January 22, 1953 a Fund examiner noted the date of birth as 7/96 (see Defendants' Exhibits 6 and 7).

On February 16, 1953, the Trustees, applying Resolution 30, denied Appellant's application for a pension, on the grounds that he had not established proof of twenty (20) years classified service in the Bituminous Coal Industry within the twenty-five (25) year period immediately preceding his application for a pension (see Defendants' Exhibits 6 and 7).⁵

Question 19 on the application required the applicant to list *all* of his employment in the coal industry, commencing with his first employment (A. 58). Since the twenty-five (25) year period immediately preceding Sturgill's application for a pension commenced in December, 1927, his re-

⁴ The authorization also stated applicant's date of birth as June 25, 1892.

⁵ But see *infra* how intervening case law, *Kosty v. Lewis*, *supra*, affected the cause subsequently.

sponse to question 19 demonstrated that he could not have more than ten years effective service during the required period (A. 58).

Whether the examiner and reviewer overlooked the date of birth derived from the Social Security Administration records, that is, 7 96 or immediately saw that on the face of the pension application, the applicant did not meet the requirements of Resolution 30 is immaterial.

On March 2, 1953, Appellant completed a second application for a pension which was received by the Trustees on April 2, 1953 (A. 61). This second application contained a substantially different work record with respect to the answer to Question 19 (A. 62). Surprisingly, this second application listed employment during the period August 1929 through June 1942, which had not been listed on the first application (A. 58, 62). On October 26, 1953, after an investigation, the application was denied as failing to meet the less stringent requirement of Resolution 30 as amended by 31 and 32 which required twenty (20) years classified service within the thirty (30) year period immediately preceding the application for a pension.

Thereafter, as can be seen from Defendants' exhibits six (6) and seven (7) voluminous correspondence between the applicant and the Trustees occurred. Finally, a full field investigation was ordered, in an attempt to unearth facts, which might support the applicant's contentions with respect to his work record. Unable to find support for Mr. Sturgill's contentions, the application remained denied.

On October 11, 1961, Appellant filed a complaint in the United States District Court seeking status as a beneficiary of this Trust (A. 6).

(c)

The Litigation

In Paragraph two (2) of the verified complaint, Appellant alleged that he was seventy-three (73) years of age;⁶ in paragraph numbered four (4) he alleged that by reason of his age and service he was entitled to a pension (A. 7).⁷ Thus, Appellant alleged a date of birth around 1887-1888. In their answer to the Complaint, the Trustees specifically denied that Appellant was seventy-three years of age; they also denied that by reason of his age and service he was entitled to a pension (A. 9-11).⁸

On November 14, 1962, Appellant filed a pretrial statement, again reciting that he was seventy-three years of age,⁹ and that by reason of his age and service he was entitled to a pension. In addition thereto, Appellant acknowledged that the Defendants had denied that he was seventy-three years of age.¹⁰ Defendant Trustees' pretrial statement filed two days later specifically stated, "3. Plaintiff did not meet the age requirements contained in pertinent resolutions enacted by the Trustees with respect to eligibility requirements for a pension." (A. 12).¹¹

⁶ "Plaintiff is of the age of 73 years; . . ." (A. 6).

⁷ "By reason and because of his . . . and his age, plaintiff became and was entitled, and qualified, upon application, to receive a pension . . ." (A. 7).

⁸ Paragraph 2 of the Fifth Defense states, "In response to paragraph two (2) of Plaintiff's Complaint, the Defendant Trustees: deny that Plaintiff is of the age of seventy-three (73) years; . . ." (A. 10).

Paragraph 4 of the Fifth Defense states, "The Defendant Trustees deny each and every allegation contained in Paragraph four (4) of Plaintiff's Complaint" (A. 10).

⁹ "2. Plaintiff is 73 years of age . . .". Apparently referring to the age of plaintiff as of the date of filing of the complaint (A. 11).

¹⁰ "5. Defendants have denied: (1) . . .; (2) that Plaintiff is 73 years of age; . . ." (A. 11).

¹¹ The plaintiff's pre-trial statement clearly demonstrates that he was aware that his date of birth was in issue, and the Defendant Trustees' pre-trial statement unequivocally placed plaintiff on notice that he did not meet the age requirements contained in pertinent resolutions setting forth requirements of eligibility for pensions.

On November 19, 1962, the Pre-Trial Statement set forth plaintiff's claim that he was born December 1, 1886; the Trustees' assertion that plaintiff did not reach the age requirements set forth in Resolutions 10 and 30 as amended;¹² and contained a stipulation that counsel for the plaintiff would give the Trustees a letter of authorization from the plaintiff, whereby they could obtain the age of plaintiff as reported to the National Census Agency (See Record).

On March 3, 1964, plaintiff's new counsel (his initial counsel having had to withdraw because of ill health) wrote to the Social Security Administration requesting information concerning plaintiff's date of birth.¹³

Thereafter on numerous occasions plaintiff recognized that an applicant must have attained the age of sixty (60) or more at the time of his application for a pension.¹⁴

Appellant's contention in his brief that the element of age only appeared in the cause in the Defendant Trustees' Pre-Trial Statement filed November 16, 1962, is obviously erroneous.

(d)

Intervening Case Law

The approach by the Trustees to the instant case, was of necessity changed, by the decision of this Court in *Kosty v.*

¹² The requirement that an applicant must have attained the age of sixty (60) or more at the time of his application for a pension was the same under Resolutions 10, 30, and 30 as amended. See *supra*, pgs. 3, 4.

¹³ Plaintiff's Exhibit 2, a letter from the District Office at Pikeville, Kentucky of the Social Security Administration of the Department of Health, Education and Welfare to Lawrence Sturgill, noted that they received a letter dated March 3, 1964 from Carl H. Imlay, "requesting information regarding your date of birth."

¹⁴ Plaintiff's motion for further pre-trial filed April 9, 1964, at page 3; Plaintiff's Further Pre-Trial Statement, filed September 24, 1964, paragraph numbered one (1); Defendant Trustees' Additional Pre-Trial Statement requesting stipulations obviously addressed to the issue of age; and the second Pre-Trial wherein the age requirement is recognized in plaintiff's claims with respect to Resolution 10.

Lewis, 115 U.S. App. D.C. 343, 319 F. 2d 744 (1963). There, this Court held that where an applicant for a pension met all the requirements of eligibility, including age, but had not applied for a pension, a subsequent change of eligibility requirements which were more restrictive, could not be applied to the applicant where no notice or publicity with respect to the intended changes had been given, and where the first resolution did not require the applicant to retire at the time he met the requirements of eligibility for a pension.

It was obvious that if plaintiff's date of birth was as alleged on his pension application, June 25, 1892 or as he contended at pre-trial, December 1, 1887, then he met all the requirements of eligibility for a pension. It was conceded that plaintiff had twenty years' service in the Bituminous Coal Industry but not twenty years' service within the thirty-year period immediately preceding his application for a pension. As an applicant, who met all the requirements for a pension, as contained in Resolution 10, except for having made application, the more restrictive resolution 30 as amended could not be applied. On the other hand, if the plaintiff, Lawrence Sturgill had not attained the age of sixty (60) years or more at the time of enactment of Resolution 30 and 30 as amended, then his case did not fall within the *Kosty* rule. Thus prior to the commencement of trial, the Trustees informed the Court that age alone was the only issue to be litigated (Tr. Vol. 1, pg. 3). At no time did plaintiff or his counsel ever suggest that the administrative record before the Trustees be reopened.

(e)

Evidence Adduced at the Hearings

Lawrence Sturgill, the plaintiff, testified: that he was born December 1, 1887 in Floyd County, Kentucky (A. 23); that his father called him James L. Sturgill and his mother, Daniel Sturgill (A. 23); that he signed papers two ways,

either with the name Lawrence Sturgill or Daniel Sturgill (A. 23, 24); that he received a Social Security pension in 1953.

On cross-examination, the plaintiff stated that Tap Taggart filled out his application for a pension.¹⁵ Although he recalled being asked most of the questions on the application by Tap Taggart, he had no recollection of being asked his date of birth (A. 24, 25). As was true throughout most of the inquiry, the plaintiff was able to give information on collateral matters but was unable to remember or failed to have any recollection as to specifics which dealt with his age.¹⁶

Appellant admitted: that his second wife's name was Flossie; that he divorced her; that the divorce occurred close to 1933; that he was asked several questions in the divorce suit; that he knew a lawyer by the name of J. A. Runyon; and a lawyer named J. M. Bolling, who was his lawyer (A. 27), but denied being asked his age (A. 27). Defendant Trustees Exhibit No. 7 contained a duly authenticated transcript of a deposition of Lawrence Sturgill taken on the 21st day of June, 1933, in the case of *Flossie Sturgill v. Lawrence Sturgill*, Case No. 4724-E in the Pike County Circuit Court, Kentucky (A. 69). This record affirms plaintiff's testimony as to the approximate date of the divorce; and the name of his attorney (A. 27). At said deposition the plaintiff testified, "I am 31 year old, live in Pike County, Kentucky, and am a common laborer." (A.

¹⁵ This is obviously the same person who on February 25, 1954 gave the Social Security Administration a statement that the plaintiff was born June 30, 1888. Both Taggart's date and plaintiff's date of December 1, 1887 disagree with the date of birth of June 25, 1892 appearing in four (4) different places on plaintiff's two applications for pension.

¹⁶ Eg. Plaintiff testified, "I just can't remember what date I told him (Tap Taggart) that I was born" (A. 25). When confronted with the situation of his divorce, he admitted having given testimony, admitted the name of his attorney, but denied being asked about his age, rather than stating that he did not remember or couldn't recall (A. 26, 27).

69). This verified statement would place plaintiff's date of birth in 1900-1901.

Although plaintiff could not tell any of the ages of his sisters and brothers (A. 27-29), he was able to give a fair chronological report as to who was older and the order of their births. Giving the oldest first and so on, he stated their order as Sally, Maude, Sam, Joseph, Jim (he said he had a brother Jim but not James—obviously they were one and the same persons, although as plaintiff testified, he undoubtedly was always called "Jim"), Patience, Lizzie, George and Lew (A. 28, 29).¹⁷ He stated that Lew was the youngest, George next older and then himself (A. 29). Plaintiff admitted that he was the Daniel L. Sturgill referred to in the School Census Records (A. 29). When asked, "And who is 'Daniel L.'?", he replied, "Lawrence—that was me." (A. 28).

The Census of 1900 taken by the Federal Government on June 1st of that year in Floyd County, Kentucky follows extremely closely the listing of sisters and brothers provided by the plaintiff, except that Daniel L. is listed after George C., rather than before (A. 65). The names of plaintiff's mother and father agree. Derinda M. listed in the Census may well have been Maude. It is entirely possible, as can be seen from later Census reports, that Sally had moved out of the home, being of such an age. This Census reports lists James D. Sturgell, as a son, born July 1886. As will be seen hereafter, this conforms to a subsequent sworn statement, which is extremely reliable, and as will also be seen, eliminates any question that Lawrence Sturgill, or Daniel L. Sturgill or James L. Sturgill (all names that plaintiff claimed he was known by) was the James D. who was born in July, 1886.¹⁸

¹⁷ The Bureau of Census Records show that the youngest child was Luena, obviously called "Lew" for short (A. 65, 66).

¹⁸ See testimony and argument relating to the draft registration cards sworn to by James D. Sturgill and Lawrence Sturgill, *infra*, pgs. 15-17, 19-22.

The 1910 Census taken by the Federal Government on April 15th of that year, in Pike County, Kentucky, agrees with the 1900 Census taken in another County and District (A. 65, 66). It lists the correct names of mother and father, and shows that only four (4) children remained at home, namely, Lizzie, George, Lawrence and Luena. This is the same order of age as appears in the 1900 Census and agrees with Plaintiff's listing, except again, Lawrence is listed below instead of above George (A. 66). Lawrence is listed as being of the age of 14 years, thus making his date of birth in the 1896-1897 area.

The 1920 Census taken by the Federal Government on January 1st of that year, in Pike County, also contains corroboration. Plaintiff admitted that his wife was named 'Virgie.' (A. 26). The divorce complaint, filed January 17, 1930 in the Pike County Circuit Court shows that they resided in Pike County, and Virgie and Lawrence Sturgill were married September 5, 1917 in Pike County (A. 70). The 1920 Census (A. 67) lists Lawrence Sturgill's age as 22 years.¹⁹ If Lawrence Sturgill was born on June 27, 1897, this Census report would be in total agreement.²⁰

The School Census Record, although of less probative value, again agrees with all other documentary proof with respect to the listing of the Sturgill children (A. 69, 70). Luena is undoubtedly omitted because, being the youngest she had not arrived at school age. Daniel L. Sturgill is listed as having been born June 24, 1894. The date of birth of James Sturgill, July 9, 1886, conforms to all other documents, including Census Records and Draft Registration cards. Note, that if Patience Sturgill's date of birth is correct, then she was born less than six months after the

¹⁹ Plaintiff's last name is found to be spelled in several ways, such as Sturgel, Sturgill, and Sturgell. See testimony of Charles A. Appel, document examiner, with respect to this point (A. 41, 42).

²⁰ See draft registration card of Lawrence Sturgill, born June 27, 1897, *infra*, pgs. 19-22 (A. 77).

birth of Lawrence Sturgill, as he claimed in his testimony, December 1, 1887.

Again, of less probative value are the birth certificates of two sons of Lawrence Sturgill, Reed and Geroid Sturgill (A. 73, 74). We do not know who provided the information for these certificates. Lawrence Sturgill is listed as twenty-six (26) years of age on the birth certificate of Reed Sturgill, who was born February 10, 1923 (A. 74). This would place Lawrence Sturgill's date of birth in the 1896-1897 area. On Geroid Sturgill's birth certificate, his father, plaintiff herein, is listed as twenty-seven (27) years of age (A. 73). Geroid was born March 2, 1925. This would place Lawrence Sturgill's birth in the 1897-1898 area. It should be noted that the divorce complaint of Virgie Sturgill, properly lists the ages of her children, Reed and Geroid (A. 70, 71) as compared with their birth certificates.

Despite the fact that Lawrence Sturgill claimed to be known by several names and used two names, to wit, Daniel L. Sturgill and Lawrence Sturgill, his own witness, Johnny K. Price, testified that he had known Lawrence Sturgill since 1925 and had never known him by any other name.²¹

Donald F. McFarland, Supervisor, Special Review Unit of the United Mine Workers of America Welfare and Retirement Fund of 1950, testified that Social Security records had been obtained by the Trustees in 1953 and 1962 relating to the plaintiff. That such records showed plaintiff's date of birth as July 1896 (A. 31).

On rebuttal, Lawrence Sturgill made two rather surprising statements. He said that his brother Jim was younger than he and that he (Lawrence) had served in the Army in

²¹ "By Mr. Imlay: . . ." (On Direct Examination):

"Q. And you know him by the name of Lawrence Sturgill?

A. Lawrence Sturgill is all I ever knew him to go by.

Q. No other name?

A. No other name." (A. 36).

1917.²² This came as a total surprise to the Trustees as plaintiff in his application for a pension filed January 9, 1953 had stated that he worked as a coal loader during the period covered by World War I. In addition, he had scrawled the word "No" across the question on the application relating to service in the Armed Forces (A. 58). Plaintiff was unable to give any details with respect to his army record (Tr. Vol. 1, pgs. 79, 80).

At the close of the hearing on May 10, 1965, the Court indicated orally, a ruling in favor of the plaintiff.

Having discovered at the trial that plaintiff claimed to have served in the United States Army in World War I, contrary to all information previously provided by the plaintiff, the Trustees immediately moved to ascertain what Army records existed which might be of assistance in clearing up the conflict over plaintiff's date of birth.

A search of the Military Records Center, General Services Administration, St. Louis, Missouri, revealed that no record of Lawrence Sturgill, Daniel Sturgill or James L. Sturgill could be found. These records also revealed that Lawrence Sturgill, himself, had made inquiry in 1955 with respect to his alleged military service. A copy of a letter from the plaintiff to Carl D. Perkins, M.C. in 1955 revealed that plaintiff claimed his date of birth was June 30, 1888. Further this letter indicated that the Veterans Administration could find no record with respect to the plaintiff. A Federal Bureau of Investigation fingerprint check also failed to disclose any Army service.²³

²² "By Mr. Imlay:

Q. Now, can you state whether or not you were ever in the Army?

A. Yes, sir.

Q. When were you in the Army?

A. I went in in '17 and came out in '17; went in on the first of '17 and came out on the last. I was in the Army eight months." (A. 32)

²³ These records were subsequently admitted in evidence as Defendant Trustees Exhibit No. 10 (A. 74-82).

Predicated on this preliminary information, a motion to reopen the case in order to take further testimony was promptly filed (A. 13). Plaintiff opposed and the Court ordered the hearing reopened to take further testimony (A. 15). Contrary to Appellant's claim, in his brief, nothing concerning fraud was stated by the Court in its order (A. 15-16). Plaintiff filed a motion for clarification of the Court's order, to which Trustees filed an opposition setting forth in detail additional evidence the Trustees had meanwhile obtained concerning plaintiff's alleged Army service. This evidence demonstrated conclusively that plaintiff was born on June 27, 1897. The Court entered an order setting the hearing for October 4, 1965 (A. 16).

In order to lay to rest once and for all any claim by counsel for Appellant that he was surprised by this new evidence, it need only be pointed out that the evidence was set forth in detail, including the place where obtained, in the Trustees' motion to reopen the cause and in their opposition to plaintiff's motion to clarify the order of the Court. In fact, Defendant Trustees' Exhibit 17, a Veterans Administration file concerning the claims of Lawrence Sturgill contains a copy of a letter from Carl Imlay to Lawrence Sturgill, dated June 16, 1965 asking his client to send any and all records relating to his Army service.²⁴

On October 4, 1965 the hearing was reopened, and the Trustees introduced Exhibit No. 8 in evidence, a draft registration card of Lawrence Sturgill signed under oath, wherein his date of birth is stated as June 27, 1897. The draft registration card is internally corroborated by the listing of Kewanee Coal Company as the name of his employer which matches the listing on his pension application, and the listing of the name of his nearest relative as

²⁴ Paragraph three of the letter recited, "Will you please send me any and all records you have relating to your Army Service in case I should need them. I know that I had your Army identification card at one time, but I think I gave it back to you." The letter was dated June 16, 1965.

Virgie Sturgill. More important, Lawrence Sturgill registered for the draft on August 24, 1918 (A. 77).

Also attached to this exhibit was a draft registration card of James D. Sturgill, signed James Sturgill and showing his date of birth as July 9, 1886. Most important, the reverse side of the card shows that James D. Sturgill registered for the draft on June 5, 1917 (A. 76).

As will be demonstrated hereinafter, the date Lawrence Sturgill registered for the draft proves unequivocally that he was born between June 6 and August 24, 1897.

The Trustees Exhibit No. 10, discussed *supra*, demonstrated that a search of the military personnel records disclosed no record of Lawrence Sturgill, James L. Sturgill or Daniel L. Sturgill, having served in the Armed Forces of the United States. A Federal Bureau of Investigation fingerprint also failed to disclose any prior service.

Charles A. Appel, originator of the Federal Bureau of Investigation Laboratory, at the behest of the Director of the Federal Bureau of Investigation in 1932, who served as its head until 1948, and who has testified in practically every state and federal court throughout the land, gave his professional opinion as a handwriting expert and document examiner, that the Lawrence Sturgill who signed the pension applications and who signed various correspondence contained in the pension file of the Trustees (Trustees' Exhibits 6 and 7), was the same Lawrence Sturgill who signed and swore to a draft registration form on August 24, 1918 (A. 41). The testimony of the expert, whose qualifications were conceded by the plaintiff, was necessitated when plaintiff could not remember whether or not he had signed such draft registration form and refused to identify his signature, claiming that he couldn't remember (Tr. Vol. 2, pgs. 31, 32).

Mr. Appel declared that the Lawrence Sturgill who signed the draft registration card and the aforesaid correspondence was not the person who signed "James

Sturgill" on the draft registration card of James D. Sturgill on June 5, 1917 (A. 41).

The introduction in evidence by the Trustees of the Veterans Administration file concerning Lawrence Sturgill, revealed that since 1955 Lawrence Sturgill had been actively and persistently attempting to obtain a pension and medical assistance from the Veterans Administration claiming to be a veteran of World War I. In support of his claim he listed his date of birth as June 30, 1888, another inconsistency. For a serial number he gave that of his son Edison (A. 45) who obviously served in World War II (A. 46). With respect to the activities of his alleged armed service, he gave a most incredible story, which may have paralleled his son's activities in World War II (See Defendants' Exhibit 17).

The Court found that plaintiff had not attained the age of sixty (60) years at the time of his applications for pension (A. 21, 22). Judgment in favor of the Defendant Trustees was entered and plaintiff appeals (A. 22).

SUMMARY OF ARGUMENT

Appellant was born June 27, 1897. Thus, on the two occasions when he applied for a pension, plaintiff was only fifty-five years of age. Despite plaintiff's various assertions as to his date of birth, documentary evidence placed his birth within the 1896-1898 area.

However, the most probative evidence, a draft registration for World War I, signed by Appellant, not only listed June 27, 1897 as his date of birth, but clearly demonstrated that he reported for registration on August 24, 1918, following President Woodrow Wilson's third proclamation requiring registration on that date of all male persons who since June 5, 1918 and on or before August 24, 1918, had reached their twenty-first birthday.

Appellant's charge that the Trustees and the Court failed to follow the criteria for proof of age contained in the

Trustees' resolution is erroneous. The resolution provided that the applicant must submit probative evidence, as to his age, where Social Security records did not verify the date of birth listed on his application. Plaintiff listed June 25, 1892, whereas Social Security records showed July 1896. Appellant also failed to distinguish between Social Security records and Social Security judgments in relying on a subsequent decision by that Agency granting him certain benefits.

The fallacy in Appellant's argument, inherent throughout his brief, is that it matters not whether Appellant was of the correct age, since this was not the basis of the initial denial. But this presupposes the inability of a fiduciary to correct an oversight. Since the Trustees have the power to terminate pensions improperly granted, it follows that they have the power to resist a civil action for a pension, where they determine that the applicant did not meet the requirement of age, even though their initial denial was based on another reason. When plaintiff subsequently arrived at the proper age, he did not meet other requirements of eligibility.

The right to re-open a hearing in a non-jury case to take further testimony, prior to the Court making findings of fact, conclusions of law and entry of judgment is discretionary with the trial Court.

Appellant's complaint that a second hearing was unfair because of his age, and confusion is unwarranted. His testimony concerning Army service was derived from a statement made to the Veterans Administration ten years before. No surprise was involved as the preliminary motion papers filed more than two months before the hearing, specifically set forth the evidence to be tendered.

Plaintiff, having failed to meet the requirement of age contained in the Trustees' resolution, setting forth eligibility requirements for pensions, cannot complain.

ARGUMENT

Lawrence Sturgill, Born June 27, 1897

When was Appellant born? Appellant's brief is completely devoid of any facts which were adduced at the hearings in the trial Court. His case rested almost entirely on his own statement that he was born December 1, 1887 and the judgment of the Social Security Administration, predicated on conflicting evidence, that he was born on that date. The resolutions of the Trustees required the introduction by the applicant, of probative evidence to determine the issue, where the records of the Social Security Administration differed from the date of birth submitted by the applicant in his application for a pension.

The date of birth of December 1, 1887 is unsupported by any probative evidence.²⁵ Even though one may testify as to his age, although the information is procured through hearsay, some foundation ought to be laid. Wigmore, *A Treatise on the Law of Evidence*, 3rd ed. Vol. 2, § 667, pg. 785, and Vol. 5, § 1493, pg. 317. No effort to develop any such foundation was made by the plaintiff.

Plaintiff's sworn statement at a deposition in a divorce proceeding held in 1933 should be considered as having good probative value. He made the statement; he was under oath; and he had no reason to lie about his age. The only weakness of this piece of evidence, which indicates a date of birth in the area of 1901-1902, if there is a weakness, is that it may be a couple of years off. However, can we even suggest, that if plaintiff was in fact born on December 1, 1887, he would have sworn in 1933 that his age was 31 years, rather than 45 years. If nothing else, this document gives the lie to plaintiff's claim of having been born on December 1, 1887.

²⁵ Plaintiff offered in evidence two affidavits (Plaintiff's Exhibits 13 and 14) which were rejected by the Court. One affidavit was signed by a mark, the other probably signed by a mark. Who prepared the handwritten affidavits is unknown.

Federal Census Records have some probative value, Cf. *Doto v. United States*, 96 U.S. App. D.C. 17, 223 F. 2d 309, 311 (1955). The 1910 and 1920 Census Records place plaintiff's date of birth in the 1896-1898 area. They are important for the listing of his brothers and sisters, as they match plaintiff's own listing of the oldest through the youngest child, with one minor exception. The 1900 Census does not show plaintiff's age. More important, these records tend to corroborate the crucial and most important record, the draft registration card, hereinafter discussed.

School Census Records probably do not have great reliability and are perhaps even less probative than the Federal Census records. However, they also confirm the listing of the names of the brothers and sisters of plaintiff. The 1900, 1901, 1902 school census record places plaintiff's date of birth as June 24, 1894.

The birth certificates of Lawrence Sturgill's sons have their probativeness lessened because we do not know who provided the information. However, they do place his date of birth in the 1897-1898 area, and thus partially confirm the crucial document which we now discuss.

The Act of May 18, 1917, C. 15, Sec. 2, 5, 40 Stat. 76 at 77, 78, provided for a selective draft to increase the military forces of the United States following the advent of World War I. It required all male persons who were already twenty-one (21) years of age and had not reached their thirty-first (31) birthday to register for the draft on the date set by the President of the United States.

By Executive Proclamation, 40 Stat. Part II, 1664, 1665, Woodrow Wilson, President of the United States, did on May 18, 1917, proclaim that the time of registration for the selective draft would be between the hours of 7 a.m. and 9 p.m. on the 5th day of June, 1917. It required those who had attained 21 years of age but had not reached

31 years to register on that date. Violation was a criminal offense punishable by not more than one year's imprisonment.

James D. Sturgill, brother of Lawrence Sturgill, born July 9, 1886, and who on the date of the proclamation was thirty (30) years of age registered for the draft on June 5, 1917 (A. 76). Charles A. Appel, the expert handwriting examiner, found that the signature on the draft registration card of James D. Sturgill was not that of the Lawrence Sturgill who registered for the draft fifteen months later or the person who signed the pension applications and numerous correspondence with the Trustees (A. 41).

By joint resolution of the Congress, the Act of May 20, 1918, 40 Stat. 557, provided that all male persons who have since the fifth day of June 1917 and on or before the date set by the President of the United States for a day of registration, attained the age of twenty-one (21) years were required to register for the selective draft.

By Proclamation dated May 20, 1918, 40 Stat. Part II 1781, 1783, Woodrow Wilson, President of the United States, decreed that all males who had attained the age of twenty-one years since June 5, 1917 and on or before June 5, 1918, were required, under criminal penalties, to register for the selective draft between the hours of 7 a.m. and 9 p.m. on the 5th day of June, 1918.

Lawrence Sturgill, Appellant herein, did not register for the selective draft on June 5, 1917, nor did he register on June 5, 1918.

On August 13, 1918, Woodrow Wilson, President of the United States, did by Proclamation, 40 Stat. Part II 1834, 1836, decree that all male persons who have since the fifth day of June, 1918 and on or before the 24th day of August, 1918, attained their twenty-first birthday, shall be required to register for the selective draft, under pain of criminal

penalties between the hours of 7 a.m. and 9 p.m. on the 24th day of August, 1918.

On August 24, 1918, Lawrence Sturgill registered for the draft (A. 77). Lawrence Sturgill was born between June 5th and August 24th, 1897.

Appellant would have us suggest that on that morning of August 24, 1918, Lawrence Sturgill, age 31, born December 1, 1887, walked into that local draft board and registered as a twenty-one year old.

The draft registration date of birth is accurate. Appellant would have had no reason to lie; to erroneously register or fail to register at the proper time was a Federal Criminal Offense; the sequence of Executive Proclamations limits the period of possible birth to two (2) months and three (3) weeks; the date of birth period is overwhelmingly corroborated by other documents which place Appellant's date of birth in the same area. The draft registration card of Lawrence Sturgill is the most probative document on the issue of his date of birth. The fact that he did not fill out the form is of no importance, because not only did he swear to it, but most important he appeared for registration on August 24, 1918 clearly evidencing that he had reached his twenty-first birthday during the period June 5, 1918 through August 24, 1918. Moreover, plaintiff knew of these facts throughout the litigation, since Social Security had informed him of the same in 1953, aside from his own recollection.

The finding of the Trial Court on the issue of age was accurate and correct, and should not be set aside unless clearly erroneous. *United States v. U. S. Gypsum Co.*, 333 U.S. 364 at 394, 395, 68 S. Ct. 525, 92 L. Ed. 746.

While Appellant talks about confusion, lack of memory and being a poor coal miner, the Court was obviously concerned about credibility of the plaintiff (A. 15, 16). The Trial Court saw the witness, heard him testify, observed

his demeanor, and from all of this was able to examine his credibility, and assess the truth of his contentions. Demeanor evidence, which a transcript cannot provide, is admissible evidence and an important element for the trial judge to consider. *Stewart v. United States*, 107 U.S. App. D.C. 159, 275 F. 2d 617 (1959).

**The Trustees and the Court Followed Scrupulously the
Criteria Contained in Resolutions Enacted by the Trustees**

Appellant charges in his brief²⁶ that the Court and Trustees ruthlessly violated the criteria for age qualification as contained in the resolutions of the Trustees. He sets forth that criteria as:

II. PROOF OF ELIGIBILITY

A. Age.

1. Whenever possible the age of the applicant will be verified by the Social Security Records (A. 52, 54).

Appellant makes two mistakes with respect to this point. First he ignores the obvious distinction between Social Security *records* and Social Security *judgments*. Social Security records obtained by the Trustees in 1953 showed that Appellant was born July 1896 (A. 31). Thereafter, in a separate proceeding which does not and could not bind the Trustees, the Social Security Administration considered all the evidence before them, and made a judgment that he was born December 1, 1887.

This was a judgment. The initial record of Social Security Administration showed a date of birth of July 1896. Their judgment, however, was based on external records furnished by Appellant.

²⁶ Appellant's Brief, pg. 14.

The second mistake Appellant makes is the failure to read the further criteria concerning age. Resolution 10 and all other possibly pertinent resolutions further state:

II. PROOF OF ELIGIBILITY

A. Age.

1.

2. Applicant shall be required to submit documentary evidence of probative value to establish his age in cases where the Social Security Administration records do not verify his age as stated on the application for pension.

B.

C. The burden of proving eligibility shall be on the applicant, and the proof submitted shall be acceptable to the Fund (A. 54, 55).

When confronted with Appellant's statement on his application that his date of birth was June 25, 1892, as compared with the Social Security Administration record that it was July 1896, and then later confronted with Appellant's prior statements of dates of birth ranging from December 1, 1887 through 1901, including just about every date in between, the Court and the Trustees applied the proper standard as contained in their resolutions.²⁷

The Trustees Have a Fiduciary Duty To Correct Errors and Not Permit an Applicant To Become a Beneficiary Where He Fails To Meet the Requirement of Age

The inherent fallacy which pervades Appellant's brief is an argument that as long as the Trustees did not consider plaintiff's age at the time of the administrative denial of his pension applications, the District Court should not have permitted the issue to be raised, and should have awarded judgment for the plaintiff. The fallacy lies in

²⁷ The standard in Resolution 30 and 30 as amended was the same as Resolution 10.

the fact that Appellant does not suggest, and never moved to have the hearing at the administrative level reopened to consider this issue, but he desires judgment nevertheless. Thus, even if plaintiff admittedly did not meet the age requirements for a pension, nonetheless, he is entitled to a pension, so long as the Trustees did not consider the issue of age at the administrative level.

Appellant would have this Court rule that the Trustees are without power to correct an error. But this Court has on two specific occasions held that pensions erroneously granted by the Trustees may be terminated where the basis of granting the same is found to be erroneous. *Marlowe v. Lewis*, D.C. Cir., No. 15,944, decided without opinion (1961); and *Kennett v. Lewis*, D.C. Cir., No. 15,892, decided without opinion (1960). The Trustees by their answer clearly indicated that plaintiff was not of the proper age. Three years before the trial, plaintiff's counsel was well aware that the Trustees denied his client's eligibility for a pension on the basis of age (See plaintiff's pre-trial statement of November 14, 1962). The resolutions enacted by the Trustees require plaintiff to submit probative evidence of his age, where Social Security Records (date of birth July 1896) do not reflect the same age plaintiff listed on his two pension applications (June 25, 1892). Plaintiff was in no way harmed by proceeding on that issue alone.

The Trustees made their decision when they filed their answer to the complaint. Was the Trustees' action arbitrary or capricious in relation to the appellant in the light of the facts adduced? *Kosty v. Lewis*, 115 U.S. App. D.C. 343, 346, 319 F. 2d 744 (1963). As fiduciaries, *Kosty v. Lewis*, *supra*, the Trustees were under a duty to correct any errors and not give status to an applicant who failed to meet one of the major requirements for a pension. Would this Court deny the Trustees the power to fulfill that duty?

**The Right To Reopen a Hearing in Order To Take Further
Testimony Is Discretionary With the Court**

The only issue at the trial initially was plaintiff's correct date of birth. Prior to the entry of findings of fact and conclusions of law, the Trustees move to reopen the hearing because of records disclosing accurate information as to plaintiff's date of birth, as the result of plaintiff's claim that he had served in the Army of the United States during World War I. This claim was completely inconsistent with plaintiff's pension application which indicated that he had worked as a loader in the coal industry during World War I, and had indicated "no" in his answer to a question pertaining to military service on the application form.

By July, 1965, some two full months before the second hearing was held, the Trustees through their motion to reopen the cause and their opposition to the motion of plaintiff to clarify the order of the Court, had specifically spelled out each and every bit of information to be presented at the second hearing. Appellant's claim²⁸ that this evidence was a surprise is completely unfounded and without any justification. As Defendant Trustees Exhibit 17 demonstrates, plaintiff's counsel wrote plaintiff on June 16, 1965, asking him to send all of his Army records. It is difficult to understand Appellant's other contention that the evidence adduced at the second hearing was collateral to the issue of age.

The right of the Court to reopen a hearing to take further testimony, where findings of fact and conclusions of law and judgment have not been entered, in a non-jury case, is completely within the discretion of the Court. *Patterson v. National Life & Accident Ins. Co.*, 6th Cir., 183 F. 2d 745, at 747 (1950); *North Central Airlines, Inc. v. Civil Aeronautics Board*, 108 U.S. App. D.C. 185 at 190, 281 F. 2d 18 (1960); *United States v. Colangelo* (DC ED

²⁸ Appellant's Brief, pg. 13.

N.Y.), 27 F. Supp. 921 (1939); *Bowles v. Six States Coal Corp.* (DC WD Pa.), 64 F. Supp. 651 at 652 (1946); Moore's Federal Practice, Vol. 6, 2nd ed., Sec. 59.04 [13], pgs. 3722-3728.

Edgar v. Finley, 8th Cir., 312 F. 2d 533 (1963), cited by Appellant involves a motion for new trial, which is governed by a different rule of the Federal Rules of Civil Procedure. *Chemical Delinting Co. v. Jackson*, 5th Cir., 193 F. 2d 123 (1951), also cited by Appellant, denied a motion to reopen a hearing, but indicated that the matter rested with the discretion of the trial court. The case does not indicate whether the motion was made before or after findings of fact and conclusions of law had been entered.

In the instant case, the Court did not err in reopening the hearing and taking further testimony.

The Record Contradicts Appellant's Contention That the Manner in Which the New Hearing Was Permitted Made It Impossible for Him To Assist His Counsel

Appellant's final contention is that the new or second hearing was unfair in that appellant because of his age, physical condition and lack of memory was unable to assist his counsel. Appellant does not contend that the first hearing was unfair for this reason. Appellant suggests that he should have had an administrative hearing on the issue of age when he was at an age that he was capable of fully participating in such hearing. Presumably he argues that once he reached an age or condition when his capacities were dimmed, all issues must be resolved in his favor or else he has been wronged.

Appellant had a fourth grade education. He could read and write. He owned property. He was persistent, and completely able to present his ideas and claims, even though his grammar was not perfect. This can be seen from the manner in which he persisted in his claim against

the Trustees; in his claim before the Veterans Administration; and his claim before the Social Security Administration. Appellant was sixty-eight years at the time of the second hearing. He was very familiar with records pertaining to his date of birth, for in 1953 he had gathered evidence which the Social Security Administration predicated its judgment upon.

At no time did Appellant or his counsel suggest that Appellant was incapable of assisting his attorney in the preparation of the case. From the moment trial counsel entered the cause in March, 1964 he was concerned with the issue of age.²⁹ Appellant brought forward the judgment of the Social Security Administration, which set forward the evidence upon which it was predicated. From that point on counsel could easily follow up any leads, and utilize any evidence which was probative and favorable. Appellant, further, was aware of evidence contrary to his position, including the important draft registration card, since 1953, when Social Security was attempting to ascertain his age.

Plaintiff was able, as heretofore pointed out, to state many specific details. But details which might sweep away the murky skies surrounding his date of birth were not forthcoming.

Appellant's claim that his confusion and lack of memory are shown throughout the second hearing, by his testimony concerning use of the M-1 rifle and landing in Normandy the day after he was allegedly inducted into the service, but the truth of the matter is that these claims were made to the Veterans Administration in 1955. Does Appellant claim confusion and lack of memory in 1955? Nor does Appellant's claim of lack of memory and confusion vindicate his use of his son's serial number as his

²⁹ See Plaintiff's Exhibit 2 which notes that counsel had written plaintiff concerning his date of birth.

own in his effort to obtain a Veterans Administration pension. Nor does it explain why in the period 1953-1955, when Appellant was much younger, and presumably less confused and with better recall, that he used such divergent dates of birth as December 1, 1887, June 30, 1888 and June 25, 1892.

CONCLUSION

It is respectfully submitted that the judgment of the United States District Court for the District of Columbia be affirmed.

EDWARD L. CAREY

VAL J. MITCH

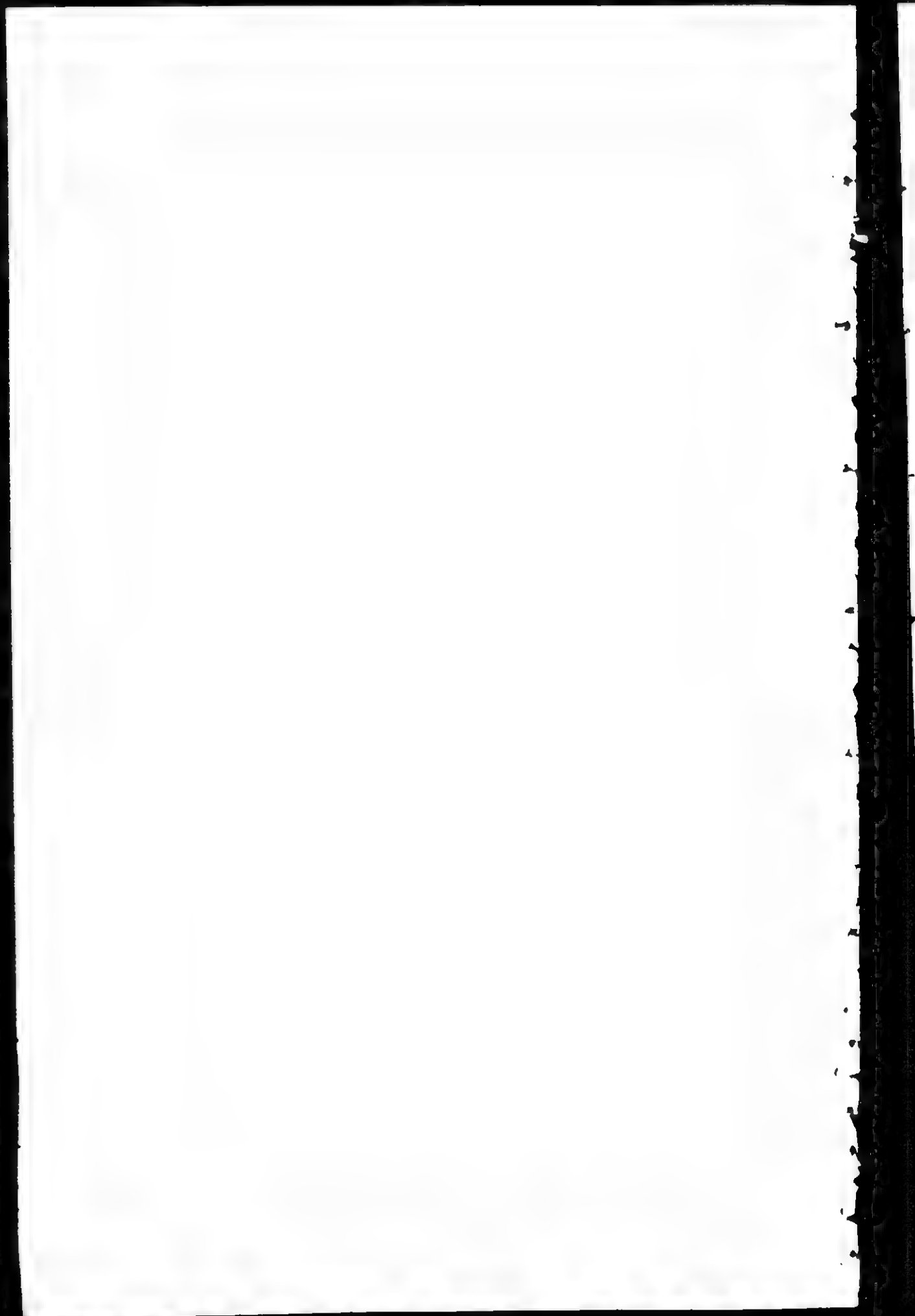
JOSEPH T. McFADDEN

Attorneys for Appellees

821 Fifteenth Street, N. W.

Washington, D. C. 20005

APPENDIX



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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,031

LAWRENCE STURGILL, *Appellant*

v.

JOHN L. LEWIS, JOSEPHINE ROCHE AND HENRY G. SCHMIDT,
TRUSTEES, UNITED MINE WORKERS OF AMERICA WELFARE
AND RETIREMENT FUND OF 1950, *Appellees*

Appeal from the United States District Court for the
District of Columbia

APPENDIX

Civil Docket**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
PROCEEDINGS****Date**

1961—Deposit for cost by

Oct. 11—Complaint, appearance—filed

Oct. 11—Summons, copies (3) and copies (3) of Complaint issued 1 & 2 ser 10/12/61.

Oct. 31—Answer of defts to complaint; c/m 10/31/61; appearance of Edward L. Carey, Val J. Mitch, Charles L. Widman and Joseph T. McFadden.—filed

Oct. 31—Calendared (AC/N)

1962

Mar. 6—Called.—Assistant Pretrial Examiner

Aug. 6—First notice under Rule 13.

Aug. 20—Notice by plttf to take deposition of Henry G. Schmidt; c/m 8-20-62;—filed

Aug. 22—Certificate of Readiness by plttf; c/m 8-21-62.—filed

Sept. 27—Deposition of Robert T. Boylan, 9-18-62. (\$28.60 by plttf)—filed

Nov. 9—Reply of plttf to interrogatories c/m 11-9-62.—filed

Nov. 19—Pretrial Proceedings—Pretrial Examiner

Dec. 4—Order authorizing filing of interrogatories and answers thereto.—(N) Walsh, J.

Dec. 5—List of witnesses to be called by deft. trustees, c/m 12-5-62.

Dec. 5—Interrogatories by plttf. to deft. c/m 10-23-62.—filed

Dec. 5—List of witnesses by plttf.—filed

1964

Jan. 15—Motion of Richard L. Merrick to withdraw as counsel for plaintiff; Exhibit, A; c/m 1-13-64; MC 1-15-64 (fiat)—Pine, J.

Feb. 12—Appearance of Carl H. Imlay as attorney for plaintiff (AC/N)—filed

Feb. 18—Order allowing Richard L. Merrick to withdraw as counsel for plaintiff and removing cause from Ready Calendar. (N) AC/N—Keech, J.

April 9—Motion of plaintiff for further pretrial hearing, for declaratory and other relief, P&A's, Exhibit A, MC 4-9-64—filed

April 15—Called—Pretrial Examiner

April 17—Opposition of defendants to motion of plaintiff for further pretrial hearing, c/m 4-17-64.—filed

May 15—Order allowing further pretrial. (AC/N) (N) —Curran, J.

June 24—Interrogatories by plaintiff to defendants, Exhibit, c/m 6-24-64.—filed

July 9—Answer of defendants to interrogatories, c/m 7-9-64.—filed

Aug. 20—Motion of plaintiff to place cause on ready calendar. c/m 8-20-64, MC 8-20-64.—filed

Aug. 31—Opposition of defendant to motion to place cause on ready calendar, c/m 8-31-64.—filed

Sep. 11—Recommendation dismissing motion of plaintiff to place cause on Ready Calendar and to assign it for further pretrial, filed August 20, 1964, as moot. AC/N Assistant Pretrial Examiner

Sept. 28—Further Pretrial Proceedings—Pretrial Examiner

1965

- May 10—Hearing begun and concluded; finding for pltf. (findings of fact, conclusions of law and order to be submitted) (Rep: Robert I. Henderson)—Corcoran, J.
- June 8—Motion of defts. to reopen record & hold further hearing: P & A; c/m 6-4-65; affidavit; exhibit. M.C. 6 15 65—filed
- June 15—Opposition of plaintiff to defendants motion to reopen record and hold further hearings; points and authorities; c/m 6/15/65.—filed
- June 17—Order granting defts' motion to reopen record and hold further hearings in order to take additional testimony. (N) Corcoran, J.
- July 19—Motion of plaintiff to clarify order and for further relief; memorandum; c/m 7/19/65; M.C. 7/19/65.—filed
- July 22—Opposition of defendants to motion to clarify order and for further relief; c/m 7/23/65.—filed
- July 23—Order denying pltf's motion for clarification of Court's order of June 17, 1965 and for further relief; setting case for further hearing on October 4, 1965 and that failure to prosecute on said date will result in dismissal. (N) (N/AC)—Corcoran, J.
- Nov. 12—Findings of fact and conclusions of law. (N) —Corcoran, J.
- Nov. 12—Order dismissing complaint. (N)—Corcoran, J.
- Dec. 13—Application for leave to appeal without prepayment of costs, attachment (granted).—Corcoran, J.
- Dec. 13—Notice of appeal by plaintiff from order of November 12, 1965. (copy mailed to Edward L. Carey) —filed
- *May 18—Transcript of proceedings, pages 1-91. (Rep. R. I. Henderson) (Court's copy)—filed

1966

- Jan. 18—Transcript of trial proceedings; Re-opened Hearing, Oct. 4 & 5, 1965, Vol. I, pages 1-120 (court's copy)—filed
- Jan. 21—Order extending time to docket record on appeal until March 11, 1966 (N)—Sirica, J.
- Feb. 8—Appearance of Ronald D. Haggart and Bryon K. Welch, as attorneys for plaintiff and withdrawal of appearance of Marshal L. Cole.—filed
- March 9—Exhibits 1, 2, 6, 7, & 8 by defts.—filed
- March 9—True copy of all documents contained in Veteran's claim file; Exhibit 17 by deft.—filed
- March 9—Order permitting counsel for the defendants to substitute a photocopy of defendants' exhibit No. 17 and directing Clerk to file same. (N) Micro 3-S-66—Corcoran, J.
- March 10—Exhibit #10 & #12 thru 16, inclusive by deft.—filed
- March 11—Record on appeal delivered to USCA; in Forma Pauperis (Clerk's Fee \$1.55)
- March 11—Receipt from USCA for original papers.—filed
- May 2—Stipulation of counsel as to supplemental record;—filed
- May 2—Exhibits #1, 2, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14 & 15, by pltf.—filed
- May 3—Supplemental Record on Appeal delivered to United States Court of Appeals in Forma Pauperis. (Clerk's fee 50¢)
- May 3—Receipt from United States Court of Appeals for supplemental record.—filed

(Filed Oct. 11, 1961)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Civil Action No. 3344-61

LAWRENCE STURGILL, P. O. Box 409, Pikeville, Kentucky,
Plaintiff,

v.

JOHN L. LEWIS, JOSEPHINE ROCHE and HENRY G. SCHMIDT,
As Trustees of the United Mine Workers of America
Welfare and Retirement Fund, 907 - 15th Street, N.W.,
Washington, D. C., *Defendants.*

Complaint—Money Due and For Retirement

1. Jurisdiction is founded on (a) the amount in controversy, which exceeds the sum of \$3,000.00, exclusive of interest and costs, and (b) diversity of citizenship. Plaintiff is a citizen of the State of Kentucky; Defendant, John L. Lewis, is a citizen of the State of Virginia but maintains an office in the District of Columbia; Defendant, Josephine Roche, is a citizen of the District of Columbia; and Defendant, Henry G. Schmidt, is a non-resident of the State of Kentucky whose citizenship is unknown to plaintiff but known to defendants, and who maintains an office in the District of Columbia.

2. Plaintiff is of the age of 73 years; is now and has been for more than twenty-five years a member in good standing of the United Mine Workers of America, a labor organization having its principal office in the District of Columbia; is now a member in good standing of Local Union No. 8336, District No. 30, of said United Mine Workers of America; and was engaged in active employment in the coal industry of the United States from the year 1912 through the year 1952, when he retired.

3. Defendants are the duly qualified and acting Trustees of the United Mine Workers of America Welfare and Retirement Fund which was originally established by the National Bituminous Coal Wage Agreement of 1950 entered into between the coal mining operators of the United States and their representative associations on the one hand and the United Mine Workers of America, the representative of the members of the organized coal working employees on the other, and continued thereafter by subsequent agreements, and which is an irrevocable trust fund under and subject to the provisions of Section 302 of the Federal Labor Management Relations Act of 1947, as amended. In accordance with the provisions of said National Bituminous Coal Wage Agreement, a portion of said trust fund is intended for and devoted to the payment of pensions on retirement to qualified employees of the coal mining industry.

4. By reason and because of his membership in said Labor Union, his more than twenty years employment in the coal mining industry and his age, plaintiff became and was entitled and qualified, upon application, to receive a pension on retirement payable from said Welfare and Retirement Fund of \$100.00 per month, commencing January 1, 1953, and continuing thereafter during his life; duly filed his application therefor with defendants, and has complied in all respects with the requirements of the rules and regulations established for the administration of said Welfare and Retirement Fund, but the defendants have arbitrarily and wrongfully refused, and still refuse, to pay or cause to be paid to plaintiff said pension of \$100.00 per month commencing January 1, 1953, or any portion thereof.

WHEREFORE, plaintiff prays:

1. That he be granted a money judgment against the defendants and each of them in the sum of \$10,600.00, with interest.

2. For an additional money judgment against defendants and each of them for \$100.00 per month for each month during the pendency of this action.

3. For a declaratory judgment against defendants and each of them that plaintiff is entitled to receive from said Welfare and Pension Fund a pension of \$100.00 per month commencing January 1, 1953, and continuing during the remainder of his life.

4. For such other, further and different relief as to the Court may be deemed just and proper.

5. For recovery of his costs and disbursements herein and a reasonable attorney fee.

(s) LAWRENCE STURGILL
Lawrence Sturgill
Plaintiff

STATE OF KENTUCKY }
COUNTY OF PIKE } ss.

Lawrence Sturgill, being first duly sworn according to law on oath deposes and states that he has read the foregoing complaint by him subscribed, knows the contents thereof, and that he verily believes the same to be true.

(s) LAWRENCE STURGILL
Lawrence Sturgill

Subscribed and sworn to before me this 6th day of October, 1961.

(s) CLAUDE REED, *Clerk*
Clerk, Pike Circuit Court

By (s) INA G. REED

(SEAL)

(Filed Oct. 31, 1961)

Answer

Come now the Defendant Trustees, by their attorneys, and in response to Plaintiff's Complaint state as follows.

FIRST DEFENSE

Plaintiff's Complaint fails to state a cause of action upon which relief may be granted.

SECOND DEFENSE

This Honorable Court lacks jurisdiction.

THIRD DEFENSE

Plaintiff's alleged cause of action did not accrue within three years next before the commencement of this action, and is therefore barred by the Statute of Limitations.

FOURTH DEFENSE

Plaintiff's alleged cause of action is barred by laches in that more than nine (9) years and four (4) months have elapsed, from the date of Plaintiff's retirement to the date of the commencement of this action.

FIFTH DEFENSE

1. In response to paragraph one (1) of Plaintiff's Complaint, the Defendant Trustees aver and admit: that the amount in controversy, exclusive of costs and interest, exceeds the sum of Three Thousand Dollars (\$3,000.00); that Plaintiff is a citizen of the State of Kentucky; that the Defendant Trustee, John L. Lewis, is a citizen of the State of Illinois; that the Defendant Trustee, Josephine Roche is a citizen of the District of Columbia; that the Defendant Trustee, Henry G. Schmidt, is a citizen of the State of Ohio; that the office of the Trust, ie., the United Mine Workers of America Welfare and Retirement Fund

of 1950, is located at 907 Fifteenth Street, N.W., within the District of Columbia.

2. In response to paragraph two (2) of Plaintiff's Complaint, the Defendant Trustees: deny that Plaintiff is of the age of seventy three (73) years; are without information sufficient to form a belief as to Plaintiff's membership and standing in the United Mine Workers of America, and Local Union No. 8336, District No. 30 of the United Mine Workers of America, and aver that such allegations are immaterial to the issues raised in the Complaint; deny that Plaintiff was engaged in active employment in the coal industry from the year 1912 through the year, 1952; admit, that Plaintiff retired in the year, 1952.

3. In response to paragraph three (3) of Plaintiff's Complaint the Defendant Trustees aver that the United Mine Workers of America Welfare and Retirement Fund of 1950 is an irrevocable trust, created by the parties to the National Bituminous Coal Wage Agreement of 1950, to wit, coal operators signatory thereto and the United Mine Workers of America, a labor union. This Trust, of which Defendants are Trustees, was created pursuant to Section 302(c) of the Labor-Management Relations Act, 1947. Subject to the discretion of the Defendant Trustees, a portion of the Trust Res received is designated as a separate fund to be administered by the said Trustees and to be used for providing pensions or annuities for persons as may be properly included as beneficiaries thereunder. Subject to the stated purposes of this Fund, the Trustees have full authority with respect to questions of coverage and eligibility, priorities among classes of benefits, amounts of benefits, methods of providing or arranging for provisions for benefits, investment of trust funds, and all other related matters.

4. The Defendant Trustees deny each and every allegation contained in paragraph four (4) of Plaintiff's Complaint.

In further answer to Plaintiff's Complaint, the Defendant Trustees deny each and every allegation therein contained not herein otherwise specifically answered.

Wherefore, Defendant Trustees pray that Plaintiff's Complaint be dismissed with costs and judgment in their favor be granted.

(Filed Nov. 19, 1962)

Plaintiff's Pre-Trial Statement

• • • • •
 2. Plaintiff is 73 years of age, is a member in good standing of the United Mine Workers of America, a labor union, has been such member for more than 25 years, and was engaged in active employment in the coal industry from 1912 through 1952, when he retired.

3. Because of his membership in said labor union, his age, and his more than 20 years' employment in the coal mining industry, plaintiff became entitled, upon application, to receive a pension of \$100.00 per month, payable from said Fund.

• • • • •
 5. Defendants have denied: (1) that plaintiff was engaged in active employment in the coal industry from 1912 through 1952; (2) that plaintiff is 73 years of age; (3) that plaintiff is entitled to a pension payable from said trust fund; (4) that plaintiff duly filed his application for a pension with defendants; and (5) that plaintiff has complied with the requirements of the rules and regulations established for the administration of said trust fund.

(Filed Nov. 19, 1962)

Defendant Trustees Pre-Trial Statement

The Defendant Trustees allege that Plaintiff is not entitled to a pension based on the following contentions.

1. Plaintiff's cause of action is barred by the Statute of Limitations.
2. Plaintiff's cause of action is barred by laches.
3. Plaintiff did not meet the age requirements contained in pertinent resolutions enacted by the Trustees with respect to eligibility requirements for a pension.

(Filed Sept. 28, 1964)

Plaintiff's Further Pre-Trial Statement

A.

PLAINTIFF'S STATEMENT OF CASE

Plaintiff adopts the statement of its *own* position as set forth on pages 1 and 2 of the Pretrial Examiner's Pretrial Order. In addition, however, Plaintiff also alleges the following:

1. Plaintiff submitted his first application to the Fund on January 9, 1953 (pp. 5-6, Deposition of Robert T. Boylan). At that time Resolution 10, adopted on April 5, 1950, by the Trustees of the Fund, was in effect. This Resolution, although requiring as one qualification for eligibility for a pension that the applicant must have served 20 years in the coal industry prior to his retirement at age 60 or over, imposed no restriction as to the period of time in which those 20 years of service had to be completed.

(Filed Sept. 28, 1964)

Defendant Trustees' Additional Pre-Trial Statement

Come now the Defendant Trustees in the above captioned cause, by their attorneys, and in addition to the pre-trial statement heretofore filed in this cause, desire to make the following additional requests for stipulations.

Additional Stipulations Requested

5. pertinent census records.
6. pertinent school records.
7. birth certificates of Geroid and Reed Sturgill.

(Filed June 8, 1965)

**Motion To Reopen Record, and Hold Further Hearing, in Order
To Take Additional Testimony**

Come now the Defendant Trustees, by their attorneys, and move this Honorable Court, sitting as a Court in Equity, to reopen the record in this cause and hold a further hearing, in order to take additional testimony.

Plaintiff in rebuttal at the previous hearing, mentioned for the first time, that he had been in the United States Army from the first part of 1917 to the last part of 1917. On cross-examination he was unable to remember what camp he was at; or the fact that he was married during that year (Tr. 79, 80). The Defendant Trustees have communicated with the Army Records Center at St. Louis, Missouri, in an effort to ascertain Plaintiff's Army records and possibly his age through such records. The Defendant Trustees were unaware of plaintiff's Army service, because on his application for a pension he had claimed to have been a loader in the coal industry during the year, 1917.

As can be seen from the attached affidavit which is made a part hereof, the Army Records Center has no record of any Army service by the plaintiff during World War I, under any of the names used by the plaintiff. This information was obtained by telephone and we are presently obtaining proper documentary evidence to support the statements contained in the attached affidavit.

Wherefore, the Defendant Trustees pray that this Honorable Court direct that the record in this cause be reopened, and a hearing be held at which time the Defendant Trustees could present in proper fashion the evidence above referred to and as set forth in the attached affidavit.

• • • • •

Affidavit

CITY OF WASHINGTON }
DISTRICT OF COLUMBIA } ss:

JOSEPH T. McFADDEN, attorney for defendant Trustees, of 907 Fifteenth Street, N.W., City of Washington, District of Columbia, first being duly sworn upon his oath, deposes and says:

1. Based on information and belief, the following information was received in the office of the Counsel to the Trustees by Thomas G. McMillan, an accountant and field investigator in the Legal Department:

a. That as a result of a telephone conversation on May 17, 1965, with Mrs. Gordon, Information Office, of General Services Administration, Military Personnel Records Center, St. Louis, Missouri, it was determined that there was no record of either a Lawrence, James L., or Daniel Lawrence Sturgill of either Pikeville, Pike County, Kentucky, or Osborn, Floyd County, Kentucky, having served in World War I according to their files.

b. That the General Services Administration has a file on Lawrence Sturgill which shows that inquiry was made by Congressman Carl Perkins of Kentucky; and by a Mr.

Sturgill of Kentucky concerning service in the United States Army during the period April, 1917, through December, 1917, and that in reply, both parties were advised that there was no records of military service on behalf of said Mr. Sturgill.

c. That Mrs. Gordon of the Information Office of the General Services Administration advised that the Federal Bureau of Investigation made a check of fingerprints and was unable to identify said Mr. Sturgill as having served the United States Army in 1917.

d. Attached is a certified copy of a letter addressed to General Services Administration dated May 18, 1965, and in reply, Mrs. Gordon advised by telephone on May 21, 1965, that it would take approximately two weeks in order to compile the information requested in our letter of May 18, 1965.

JOSEPH T. McFADDEN
Joseph T. McFadden

SUBSCRIBED AND SWORN To before me this 2nd day of June, 1965, as witness my hand and seal.

SARA E. CAREY
Notary Public

(Filed June 17, 1965)

Order

This case was heard on May 10, 1965 and a decision was announced orally from the bench to the effect that the plaintiff, a mine worker, was entitled to the benefits of the pension plan administered by the Trustees of the United Mine Workers of America Welfare and Retirement Fund.

Subsequently, and prior to the entry of formal judgment, the attorneys for the defendants brought to the Court's

attention by way of a motion to reopen the record, newly discovered evidence which, if true, not only would reflect seriously upon the credibility of the plaintiff who appeared as a witness but would in fact be sufficient to justify the Trustees in denying to the defendant the relief accorded him by the decision of the Court rendered at trial.

To permit the Court's judgment to be formalized under these circumstances would only result in unnecessary litigation, since it would immediately be subject to reopening on grounds that the newly discovered evidence, if true, would justify the initial action of the Trustees denying relief to the plaintiff. *Cf., Kennet v. United Mine Workers of America*, 183 F. Supp. 315 (D.D.C. 1960). In the interests of dispatch and to avoid unnecessary litigation, it is this 17th day of June, by the Court:

ORDERED: That defendant's motion to reopen the record, and hold further hearing, in order to take additional testimony be, and the same hereby is, granted.

(signed) HOWARD F. CORCORAN
Judge

(Filed July 22, 1965)

**Opposition to Plaintiff's Motion to Clarify Order and
for Further Relief**

Come now the Defendant Trustees, by their attorneys, and oppose plaintiff's motion to clarify order and for further relief, and for grounds of said opposition state as follows:

1. As a result of plaintiff's testimony at trial to the effect that he served in the United States Army in 1917, the Defendant Trustees have not only discovered that plaintiff did not in fact serve in the United States Army

as he alleged, but, more important, that on June 5, 1918, plaintiff registered for the draft and swore that he was born June 27, 1897. Thus, plaintiff not only fraudulently stated to the Trustees that he was born in 1892, when in fact he was five (5) years younger, but more reprehensible he testified at trial that he was born in 1887 attempting to make himself ten (10) years older than he really was, and further told the Court that he had served in the United States Army in 1917, when in fact, he never served in the United States Army and even did not register for the draft until June 5, 1918.

2. The Defendant Trustees have obtained all documentary evidence necessary to establish not only that plaintiff did not serve in the United States Army as alleged, but that his true and honest date of birth is June 27, 1897. The Defendant Trustees are ready to proceed with the hearing ordered by the Court in this cause whenever the Court so directs.

3. The Defendant Trustees are agreeable and available to whatever procedure the Court desires with respect to this matter.

Wherefore, the Defendant Trustees pray that plaintiff's motion be denied.

(Filed Nov. 12, 1965)

Findings of Fact and Conclusions of Law

This cause having come on to be heard for trial without a jury on May 10th and October 4th, 1965, and the Court having heard all of the evidence adduced by the Plaintiff and the Defendant Trustees, and the Court having heard argument in open Court by counsel for all parties, the Court does this 12th day of November, 1965, make the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. This is an action for a judgment declaring that Plaintiff is entitled to pension benefits under the National Bituminous Coal Wage Agreement of 1950 and the Trust known as the United Mine Workers of America Welfare and Retirement Fund, and for a money judgment against the Trustees of this Fund for accrued pension benefits from the date of Plaintiff's eligibility to benefits to the date of the judgment, and for a declaratory judgment that Plaintiff is entitled to receive a monthly pension or annuity, commencing from the date of the judgment herein and continuing during the remainder of Plaintiff's life.

2. The United Mine Workers of America Welfare and Retirement Fund of 1950 is an irrevocable trust created pursuant to the provisions of Sec. 302(c) of the Labor Management Relations Act, 1947, 61 Stat. 157, as amended, 73 Stat. 537; 29 U.S.C. Sec. 186(c). Settlers of the trust were the United Mine Workers of America, a labor union, and coal operators signatory to the National Bituminous Coal Wage Agreement of 1950. The trust indenture is contained in pertinent provisions of the National Bituminous Coal Wage Agreement of 1950.

3. Defendants are trustees of the said trust.

4. Among other things the Trust Indenture provides:

Subject to the stated purposes of this Fund, *the Trustees shall have full authority, within the terms and provisions of the "Labor-Management Relations Act, 1947," and other applicable law, with respect to questions of coverage and eligibility, . . . and all other related matters.* (Emphasis supplied).

5. Pursuant to such authority, the Trustees, on April 2, 1950, promulgated Resolution No. 10, which set forth the requirements of eligibility for pensions. The first requirement of the resolution, is that the applicant must have,

"Attained the age of sixty (60) years or over at the time of his application for a pension."

6. Plaintiff filed an application for a pension, dated December 6, 1952, which was received by the Trustees on January 19, 1953. This application was denied by the Trustees on February 16, 1953. Plaintiff filed a second application for a pension on March 2, 1953, which was received by the Trustees on April 2, 1953, and was also denied.

7. Both of plaintiff's applications for pension state his age as sixty (60) years and his date of birth as June 25, 1892.

8. The Trustees denied plaintiff's application for pension on the basis of lack of requisite service. Plaintiff's complaint in this cause was filed October 11, 1961. In their answer to the complaint, the Trustees specifically put in issue the question of plaintiff's age. The Trustees continue to deny plaintiff's eligibility for a pension on the basis of lack of meeting the age requirement, through pre-trial. When this cause came on for hearing by the Court, the sole issue for determination had been reduced to the question of plaintiff's age at the time of application for a pension.

9. At trial, plaintiff testified that he was born December 1, 1887, which date of birth was in conflict with the dates of birth set forth in his pension applications. Plaintiff also introduced in evidence a certificate from the Health, Education and Welfare Department of the United States showing that he had been receiving Social Security payments predicated upon the age to which he had testified.

10. The Defendant Trustees introduced in evidence on the issue of age the following:

(a) A draft registration form executed by the Plaintiff, manifesting that Plaintiff registered for the draft in World War I on August 24, 1918. This draft registration form

shows his date of birth as June 27, 1897. This statement was affirmed, verified and executed by the Plaintiff. An expert witness testified that by handwriting analysis, that the signature on the draft registration form (Defendants' Exhibit No. 8) was the same as the signature of Lawrence Sturgill appearing on both his applications for pension and numerous correspondence contained in the administrative file of the Trustees.

(b) On June 20, 1933, Lawrence Sturgill swore in a deposition in an action between himself and his wife, that he was thirty-one (31) years of age, thus making his date of birth approximately 1902.

(c) Records of the Social Security Administration obtained by the Trustees show Plaintiff's date of birth as July, 1896.

(d) The file of the Trustees also contained United States Census records pertaining to the Plaintiff. The 1910 Census showed a Lawrence Sturgill, age 14, thus a date of birth of 1896. The 1920 Census showed Lawrence Sturgill as age 22, thus a date of birth of 1898.

(e) Birth certificate of the son of Lawrence Sturgill, Reed Sturgill, born February 10, 1923, lists the father as Lawrence Sturgill, age 26, thus making his date of birth as 1897.

(f) The birth certificate of another son, Geroid Sturgill, born March 2, 1925, shows his father as Lawrence Sturgill, age 27, thus making his date of birth as 1898.

(g) School records show plaintiff's date of birth as June 24, 1894. These are school census records for 1900, 1901 and 1902.

(h) Plaintiff testified that he was known as Daniel L. Sturgill, that the school and census records referring to that name actually referred to him; that he had only one sister "Lew" who was younger than he. These records

show a Luena Sturgill as being the youngest child of the family. According to these records, if Plaintiff was born on December 1, 1887 as he testified, then his sister Patience was born six months after he was, in May, 1888.

11. Plaintiff also testified that during 1917 he was in the United States Army. He was unable to give any details concerning such service. His testimony is in conflict with his application for a pension which shows him working in a coal mine during this period.

Records of the General Services Administration, Military Personnel Records Center, show that there is no record of plaintiff having been in the military service and his fingerprints are not on file with the Federal Bureau of Investigation fingerprint file of former members of the Armed Services.

Records of the Veterans Administration show that Plaintiff has twice applied for benefits as a veteran, but has been denied the same. These records contain an incredible statement, which can only be attributed to Plaintiff, wherein he states that he entered the Army on April 6, 1917; was in Europe the next day; fought in Normandy; used an M-1 rifle.

12. The Act of May 18, 1917, C. 15, Sec. 2, 40 Stat. 76, 77, and 78, and the executive orders issued pursuant thereto, required the registration of all male citizens of ages twenty-one through thirty-one years. The plaintiff did not register for the draft pursuant to this statute. The Act of May 20, 1918, C. 79, 40 Stat. 557, and the executive orders issued pursuant thereto, required all male citizens to register for the draft after reaching their twenty-first birthday, at times and places designated by the President of the United States. Lawrence Sturgill, the plaintiff herein, registered for the draft on August 24, 1918.

13. In view of the foregoing the Court finds as a fact from such circumstances that Lawrence Sturgill was born

in 1897 and that he had not reached the age of sixty (60) years when he applied to the Trustees for a pension.

CONCLUSIONS OF LAW

1. Predicated upon the testimony adduced before the Court, the demeanor and answers of the Plaintiff, the documentary evidence adduced in this cause, the Court concludes as a matter of law, that the Plaintiff listed an incorrect age and date of birth in his applications for pension from the Defendant Trustees.

2. The Defendant Trustees did not arbitrarily or capriciously deny and refuse to pay, Plaintiff's application for a pension, as the Trustees had substantial evidence that Plaintiff had not met the requirement of age as contained in Resolution No. 10, containing requirements of eligibility for pensions.

3. Plaintiff's complaint will be dismissed with costs.

H. F. CORCORAN
Judge

(Filed Nov. 12, 1965)

Order

This cause having come on for hearing before the Court without a jury, and upon consideration of all the testimony adduced by the Plaintiff and the Defendant Trustees, and after argument by counsel for all parties in open Court, and the Court having made findings of fact and conclusions of law, it is, by the Court, this 12th day of November, 1965,

ORDERED that Plaintiff's complaint be and the same hereby is dismissed.

(Signed) HOWARD F. CORCORAN
Judge

the plaintiff, called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Imlay:

Q. Mr. Sturgill, would you give the Court your complete name? A. Lawrence Sturgill.

Q. And could you state, Mr. Sturgill, the date of your birth? A. December the 1st, 1887.

Mr. Carey: I am sorry, Your Honor, I don't like to interrupt but I didn't hear him.

The Court: I think he said December 1st, 1887.

Mr. Imlay: Yes.

By Mr. Imlay:

Q. And could you tell us where you were born, Mr. Sturgill. A. Floyd County, Kentucky.

10 Q. What is the County again? A. Floyd County,
Kentucky.

Q. Claude County? A. Yes, sir, Floyd County, Kentucky.

Mr. Carey: Floyd.

Mr. Imlay: Floyd—F-L-O-Y-D—yes.

By Mr. Imlay:

Q. And, Mr. Sturgill, have you at any time been known by any other name than Lawrence Sturgill? A. Well, my father, he called me James L. Sturgill after him, and my mother called me Daniel Lawrence. She wanted me to go by the name of Daniel.

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11 Q. How do you sign your papers, Mr. Sturgill?

A. Well, I sign them two ways—Daniel Sturgill and Lawrence Sturgill.

Q. Do you still sign, use both signatures? A. Well, I have—

Q. Well, excuse me, could you say that louder, Mr. Sturgill? A. Well, I have signed my name "L. Sturgill" and "Lawrence Sturgill."

Q. What name do you ordinarily go by? A. Lawrence Sturgill.

Q. Mr. Sturgill, do you receive Social Security benefits? A. Yes, sir.

Q. Could you tell us how long you have been receiving those benefits? A. Since 1953.

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12 Cross Examination

By Mr. Carey:

Q. Mr. Sturgill, you filed an application for a pension with the Mine Workers Welfare Fund, did you not? A. Yes.

Q. And you filed that approximately in 1953, the first part; isn't that true?

Did you fill out a pension application with the Mine Workers Welfare Fund in the first part of 1953? A. Yes, sir.

Q. You filled that out yourself, did you not? A. Huh?

Q. Did you fill that out yourself? A. No, sir. Tap Taggart filled out the application.

13 Q. Who was that? A. Tap Taggart.

Q. Tap Taggart? A. Taggart.

Q. Who was he? A. He was the President of our Local.

Q. And at the time you filled out this pension application, did he ask you a lot of questions? A. He didn't ask me many questions. He knowed me all me life.

Q. That's right. Did he ask you where you were born? A. Yes, sir.

Q. Did he ask you when you were born? A. I don't remember whether he did or not.

Q. Did he ask you where you were born? A. Well, he knowed where I was born.

Q. My question is, Mr. Sturgill, did he ask you where you were born? A. Yes.

Q. Did he ask you the name of your wife, your wife's first name? A. Yes, sir.

Q. Did he ask you where you were last employed?

14 Did he ask you where you last worked? A. Yes.

Q. Did he ask for the name of the coal company with whom you were employed? A. Yes.

Q. Did he ask you the last date that you worked for this particular company? A. Yes.

Q. And did you give him that information that he asked of you with these many questions? A. Yes.

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16 Q. Now, what date did you tell him you were born?

What was the date of your birth that you told this man when he filled out your pension application? A. I'm not sure what date I told him.

Q. Was it December, 1887?

Mr. Imlay: Excuse me, Your Honor. I would object to that because it assumes that the witness did tell this Mr.

17 Tap Taggart that he was born on such and such a date. That hadn't been established.

Mr. Carey: I merely asked what date he told this man. He said he told him his date of birth. I now ask him what his date of birth was he told that particular man at that time.

The Court: Well, he can answer that, if he remembers.

The Witness: I just can't remember what date I told him that I was born.

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18 By Mr. Carey:

Q. When you filled out this pension application in the early part of 1953, did you sign your name to that pension application? A. Yes, sir.

Q. And how did you sign it, if you can remember? A. Lawrence Sturgill.

Q. Lawrence Sturgill. Now, do you recall filling out a second pension application in March of 1953? A. Yes, sir.

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25 By Mr. Carey:

Q. I don't think you answered my last question, Mr. Sturgill.

How many times have you been married? A. Three times.

Q. What was your first wife's name? A. Virgie.

Q. What was your second wife's name? A. Flossie.

Q. And what is your present wife's name? A. Sarah, but she died out the second day of June 1960.

Q. Sarah was your third wife, is that true? A. Huh?

Q. Sarah was the name of your third wife? A. Sarah was the name of my last wife.

Q. Your third wife? A. Virgie was my first.

Q. Yes, Virgie first, Flossie second, Sarah third—correct? A. Yes.

Q. Now, Mt. Sturgill, did your second wife divorce you or did you divorce her, Flossie, to wit? A. I divorced her.

Q. When did that occur, in what year? A. I can't remember.

Q. Was it in the year 1933? Would that help you remember? A. I was married to Sarah in 1933. It's close to that date when I divorced Flossie.

Q. Do you recall being asked a lot of questions by a lawyer at the time when you and your wife, Flossie, had this marriage problem, when you both got divorced from one another? A. I was asked several questions in the divorce suit.

Q. In 1933, is that true? A. I can't remember. I couldn't just say the date because I can't remember it, but

it was close somewhere. I know I was married to Sarah in '33.

Q. And you recall being asked a lot of questions about this marriage you had with Flossie at the time of the divorce; is that true? A. I was asked several questions.

Q. In 1933 at the time of this divorce proceeding, were you asked how old you were at that time? A. No, sir.

Q. You don't ever recall being asked that at all? A. No, sir.

Q. Would it help you remember if I asked you this: "State your name, state your age, residence and occupation."

Do you recall being asked that question in 1933 in a lawyer's office in Pikeville, Kentucky? A. No, sir, I don't remember anything like that.

Q. Do you know a lawyer by the name of Runyon, J. A. Runyon? A. I know him. I know J. A. Runyon.

Q. Do you know a lawyer by the name of J. M. Bolling? A. Yes, sir.

Q. And who was your lawyer? A. J. M. Bolling.

Q. Bolling? A. Uhuh.

Q. And do you recall answering this question: "State your age, residence and occupation." "Answer: I am 31 years old, live in Pike County, Kentucky, and am a common laborer."

You were under oath at that time. Do you recall making that—

Mr. Imlay: Wait a second. I object to counsel testifying.

The Court: Let him answer the question.

By Mr. Carey:

Q. Do you recall being asked that question at that particular time? A. I don't remember.

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Q. How many children did you have by your first wife, Virgie? A. Five.

Q. How many? A. Five.

Q. Did you have a child by the name of Reed? A. Yes, sir.

Q. Did you have a child by the name of Geroid—G-E-R-O-I-D? Is that Geroid? Am I pronouncing it correctly? A. Yes.

30 By Mr. Carey:

Q. What was your mother's name? A. Emily R.

31 Q. Was Maude your oldest sister? A. No, sir.

32 Q. Who was older than she? A. Sally.

Q. Who came after Sally? A. I believe I had a brother named Sam was next to Sally.

Q. Now, did you have a brother, Joseph? A. Yes, sir.

Q. Did he follow Sam? A. Huh?

Q. Did he follow Sam? A. Yes.

Q. Did you have a brother James? A. No brother James, I had a brother Jim.

Q. Well, he was known as James, was he not? His correct name was James? A. I never heard him called James. We always called him Jim.

Q. Did he die in the year 1945? A. I don't remember when he died, to tell you the truth.

Q. Was it during the war, Mr. Sturgill? A. Huh?

Q. Was it during the war? A. I don't remember that.

33 Q. Is all of your family buried in the one graveyard in Kentucky? A. No, sir.

34 Q. Do you have a sister, Patience? A. Yes, sir.

Q. Do you have a sister, Lizzie? A. Yes, sir.

Q. Do you have a brother, George? A. Yes, sir.

Q. And who is "Daniel L."? A. Lawrence—that was me.

35 Q. You were the youngest of the family, were you not, Mr. Sturgill? A. No, I wasn't the youngest.

Q. Well, who was younger than you? A. Lew.

Q. Who? A. Lew.

Q. Lew? A. Yes.

Q. Was anybody other than Lew—were you next to the youngest? A. I don't—let's see, the way I remember it, George was next to Lew and Me next to George. Lew was the youngest and George the next and me the next.

• • • • •
36 Q. Who was Daniel L. Sturgill who was born on June 24th, 1894, according to the school census records in County of Floyd in the State of Kentucky?

Mr. Imlay: If you know.

By Mr. Carey:

Q. If you know? A. That would have to have been me.

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The Court: May I ask the witness one question?
What education have you had?

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The Court: What education have you had? Have you been to school?

37 The Witness: I ain't had but a minor education, up to the fourth grade.

The Court: Fourth grade?

The Witness: Yes.

• • • • •
47 **Donald F. McFarland**

called as a witness by the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Carey:

Q. Mr. McFarland, will you state your full name and occupation, if you will, please? A. Donald Leroy McFarland.

Q. And what is your present occupation? A. I'm a Supervisor, Special Review Unit, United Mine Workers Welfare And Retirement Fund.

Q. How long have you occupied that position? A. Approximately 13 years.

48 Q. And prior to your being Supervisor, what was your position before that? A. I served in a different capacity, starting from Examiner to Reviewer, Administrative Assistant.

Q. Examiner of what? A. Pension applications.

Q. And how long have you been involved in examining pension applications and supervising pension applications for the defendant Trustees? A. Since 1958.

Q. What do your specific duties consist of, Mr. McFarland? A. At the present time?

Q. Yes, sir. A. My duties are to see that all applications are examined properly and as thoroughly as they can be to determine the eligibility.

Q. And how is eligibility determined? What do you use as a standard or a criterion?

The Court: Excuse me. Is this going to go to the question of age? I thought we stipulated everything but age.

Mr. Carey: I was going to ask him one question, Your Honor, about this file.

By Mr. Carey:

Q. I will show you Defendants' Exhibit No. 6 and No. 7. Will you check there and find the Social Security
49 record, if you will?

(The witness complied.)

A. Yes, sir.

Q. And how was that Social Security record secured? Can you tell us that, Mr. McFarland? A. This record is secured from the Social Security Administration in Baltimore upon the authorization of an application for pension.

When he makes an application for a pension he signs the authorization form which is attached to the application.

Q. What do you do with that authorization received from the pension applicant for a Social Security record?

A. Upon receipt that form is sent to Baltimore.

Q. And subsequently what happens then? A. They return to us then a copy of the entire wage record.

Q. Will you look at that Social Security record contained in that file of the plaintiff, Mr. Sturgill, and tell us what date of birth is listed there? A. This record indicates the date of birth to be July of 1896.

Q. July of 1896? A. Yes, sir.

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54 By Mr. Imlay:

Q. Mr. McFarland, was this document that we referred to from Social Security received after October 1961?

A. There are two of them in the file. One of them was received in 1953. The second one was received in 1962.

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67 **Lawrence Sturgill**

the plaintiff, recalled as a witness in rebuttal, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination

By Mr. Imlay:

Q. Mr. Sturgill, you testified, I believe, that you had a brother by the name of Jim—is that correct? A. Yes, sir.

Q. Now, could you tell us, give us any idea of what brother Jim's age was in respect to your own? Was he younger or older? A. He's younger than me.

Q. Is he still alive? A. No, he's passed away.

Q. Now, Mr. Sturgill, what name did Jim go by,
68 what did they call him in your family? A. Jim, Jim Sturgill.

Q. Was he known by any other name, to your knowledge?
A. No, not that I ever heard of.

Q. Now, what names were you known by again, Mr. Sturgill? A. Well, my father called me—

Mr. Carey: Your Honor, I am going to object to this. This is not rebuttal. This was developed on direct-examination.

Mr. Imlay: Well, Your Honor, we had conflict in names in some of these documents that were admitted.

The Court: Go ahead.

By Mr. Imlay:

Q. What names were you known by? A. James L. and Daniel Lawrence.

Q. And what are you presently known by? What is your present name? A. Well, back at my home they call me "James L." or "Daniel Lawrence" or "Lawrence."

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74 By Mr. Imlay:

Q. Now, can you state whether or not you were ever in the Army? A. Yes, sir.

Q. When were you in the Army? A. I went in in '17 and come out in '17; went in on the first of '17 and came out on the last. I was in the Army eight months.

75 Mr. Carey: I am sorry, Your Honor, I am reluctant to interrupt but—he went in in '17 and I didn't get the balance of it.

The Court: He joined the Army at the beginning of '17 and came out of the Army at the end of '17 is the way I understood it.

Is that right?

The Witness: Yes.

By Mr. Imlay:

Q. In connection with your Army record, did you ever have any occasion to contact the Army in any way about

your Army record? A. The Social Security people, when I got my Social Security, said they found my—

Mr. Carrey: Objection to what the Social Security said, Your Honor, that's hearsay.

The Witness: (Continuing)—Army record.

By Mr. Imlay:

Q. Did Social Security ask you for your Army records?

A. No, they didn't.

Q. Did the Social Security indicate to you that they had referred to your Army records? A. Yes, sir.

• • • • •

79 Cross-Examination

By Mr. Carey:

Q. Mr. Sturgill, you said you were in the Army in 1917; is that true? A. Yes, sir.

Q. From the first of the year until the end of the year; is that true? A. Yes, sir.

Q. Was your brother in the Army, your brother, James? A. No, sir.

Q. He was never in the Army at all? A. No, sir.

Q. When were you first married? A. I don't know the date, but I was first married to Virgie.

Q. What year was that? A. I can't remember the date.

Q. Can you remember the year? A. No, I don't.

Q. Where were you in 1917 in the Army, where were you located? A. I can't remember.

Q. You say you can't remember? A. No, I can't.

Q. Do you recall getting married on September 9th, or September 5th, 1917? A. I can't remember the date that I was married except the one, the last wife.

Q. How old were you when you first got married? A. I can't answer that question.

Q. Were you 20? A. I don't think I was 20. I just don't know my age.

Q. Were you 25? A. I couldn't tell exactly.

Q. Were you 28? A. I wouldn't know.

Q. Were you a teenager when you got married? A. What do you mean, the first—

Q. Your first marriage. How old were you when you first married Virgie? Virgie was your first wife, was she not? A. Yes, sir.

• • • • •

S1 Q. Will you look at that and indicate to the Court where you were employed and when between the years 1914 through June 1918? A. Well, I was at Rogers Coal Company at Kiwana, Kentucky.

Q. This was a form that you signed your signature to back in 1952; is that true? A. That's my signature.

Q. And you show your employment from May 1914 through June 1918 as a Loader at the Rogers Coal Company at Kenawi, is it, Kentucky—is that true? A. Kiwana, Kentucky.

Q. Well, if you were employed in the coal industry from 1914 through 1918, how could you have been attached to the United States Army in 1917? A. I was in the
82 Army in '17, the first part, and come out on the last part of '17.

Q. Well, is this information that you report on your pension application incorrect? A. I don't understand what you—

Q. Well, did you work for the Rogers Coal Company the entire year of 1917? A. Yes, sir. That was where I was when I went to the Army.

Q. You got married in 1917, too, did you not? A. Somewhere in there. I don't remember just the exact date that I was married.

Q. When you signed your pension applications that went to the Trustees, you signed your name as "Lawrence Sturgill," did you not? A. I might have done it.

Q. I didn't understand? A. I said I might have signed it that way.

Q. Well, I'll show it to you and let you look at it again, if you will.

(The witness examined the document.)

How did you sign it on Defendants' Exhibit No. 6? A. That's my signature.

Q. And how is it signed? A. Lawrence Sturgill.

83 Q. And how is it written on the application, on the third question of the same pension application? A. Lawrence Sturgill.

Q. You were never known as "Jim," were you? A. No, not as "Jim," but I was knowed as "James L." and "Daniel." I never was called "Jim."

Q. Your brother was called "Jim," was he not? A. Yes, sir.

Q. And Jim was born in July of 1886, wasn't he? A. I don't know when he was born.

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84

John K. Price

85 called as a witness by the plaintiff in rebuttal, having been first duly sworn, was examined and testified as follows:

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Direct Examination

By Mr. Imlay:

Q. Will you state your full name? A. Johnny K. Price is my full name.

Q. Johnny K. Price? A. I'm known at home by three names—J. K. Price, John K. Price and Johnny K. Price. That's my three names.

Q. Now, Mr. Price, where do you live? A. I live at Pikeville.

Q. In the State of— A. Pikeville.

Q. State of Kentucky? A. Yes, sir.

86 Q. Now, Mr. Price, what is your occupation? A. Mining all my life.

Q. Now, would you look at this gentleman over here seated at the table and tell me if you know him? A. Yes, I've known him ever since nineteen and twenty-five.

Q. What's his name? A. Lawrence Sturgill.

Q. You've known him since 1925? A. Yes, sir.

Q. Where did you first meet him? A. I met him in Pikeville.

Q. In what connection did you meet him? A. What connection?

Q. Well, how did you meet him? A. Well, I just met him there in town. He was trading around and me and my mother was up there trading at the store and met Mr. Sturgill, and my gradpa who is dead, he knows Mr. Sturgill.

Q. Did you ever have occasion to work with him? A. Yes, sir. I worked with him.

Q. When did you work with him? A. I worked with him in 1926.

87 Q. And how long did you work with him? A. Well, I worked one mine with him. There were about three or four operators operated it, but I worked with him at the one mine about ten years.

Q. Well, did you work with him up until the time he left the mines? A. No, the mine, it worked out in 1938, this mine.

Q. About how long did you work with Mr. Sturgill? A. Well, I worked with him at different mines from 1926 up untill nineteen and fifty-two.

Q. And you knew him by the name of Lawrence Sturgill? A. Lawrence Sturgill is all I ever knew him to go by.

Q. No other name? A. No other name.

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EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS
OF OCTOBER 4, 5, 1965

22

Charles Andrew Appel Jr.

called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Carey:

Q. Mr. Appel, would you kindly state your full name and address for the record? A. Charles Andrew Appel, Jr.

23 Q. Where do you live, sir? A. 3383 Stephenson Place, Northwest, Washington, D. C.

Q. What is your occupation? A. That of document examiner, by which I mean the analysis of handwriting for evidence of who wrote it, analysis of typewriting for evidence of what machine was used to type it, the analysis of paper and ink for evidence of authenticity of the document.

Q. When and how did you start this work, Mr. Appel? A. While employed in the Federal Bureau of Investigation as a special agent, I was assigned by the Director to make a study of laboratory analysis in aid of litigation and I discovered an ability in this regard, and then I read the literature on the subject, attended lectures which were given by qualified examiners, Albert S. Osborn of New York and Dr. Wilmer Souder of the National Bureau of Standards, Washington, D. C., and Northwestern University lectures.

Q. Did you have occasion to do anything with the Federal Bureau of Investigation Laboratory when it was first set up? A. Well, I am the man that set it up under the direction of Mr. Hoover.

Q. When was that set up, Mr. Appel? A. It was formally opened in 1932.

24 Q. For how long a period of time were you associated with the Federal Bureau of Investigation Laboratory dealing with questioned documents? A. From that time until my retirement at the end of 1948. Thereafter I opened my own private laboratory and have been doing the work ever since.

Q. What is your training? What is your educational background? A. I am a graduate from Georgetown University in law.

Q. What year was that? A. 1922.

Q. Are you a member of any bar associations? A. I was admitted to the Bar of the District of Columbia in 1922 and of the United States Supreme Court in 1929.

Q. Have you ever before qualified as an expert witness to give testimony as a document examiner? A. I have qualified in every state of the union, in state and military and federal courts.

Q. Can you approximate for the Court the number of times you have either testified or examined questioned documents? A. I am afraid I can't.

25 Mr. Imlay: Your Honor, I would concede within the scope of a very narrow concession the witness' qualifications as a handwriting expert. My objections to his further testimony run on different bases, however, and I would certainly object to any testimony he might give as to documents that I haven't had a chance to investigate in this case.

The Court: Well, you accept him as a qualified expert?

Mr. Imlay: I accept him on that basis, yes.

Mr. Carey: We won't go into any of the cases this man was involved in.

By Mr. Carey:

Q. Mr. Appel, pursuant to my request, did you make an examination of some documents? A. Yes, sir.

Q. Where did you first see those documents? A. You brought them to me at my laboratory.

Q. And where is your laboratory? A. In my house at 3383 Stephenson Place.

Q. Do you recall when that was, Mr. Appel? A. It was June the 15th, 1965.

Q. And after your examination, did you provide
26 an opinion for me, sir? A. Yes, sir.

Q. I show you Defendants' Exhibit No. 8. Have you had occasion to see that on a prior occasion? A. Yes, sir.

Q. What are you looking at, sir? A. I am looking at the reproduction of the registration card of James Sturgill.

Q. And what else are you looking at, sir? A. And a registration of Lawrence Sturgill.

Q. Those two registrations are part of Defendants' Exhibit 8, is that correct? A. Yes, sir.

Q. Now, I show you Defendants' Exhibit 5 and ask you have you had occasion to see this signature before? A. Yes, I have.

Q. Whose signature is it? A. Lawrence Sturgill.

Q. What is that document you find the signature on to which you make reference? A. It is an application for pension, United Mine Workers of America.

Q. What date is that pension application? A. December 6th, 1952.

27 Q. I show you another signature. Can you identify that signature as to what name it is? A. Lawrence Sturgill.

Q. To what document is that attached, sir? A. An application for pension, United Mine Workers of America, dated March 2, 1953.

Q. And whose name is printed in Question No. 3 on that application? A. Lawrence Sturgill.

Q. I show you another signature. Can you identify that signature? A. Lawrence Sturgill.

Q. And what date is that? A. It is April 20, 1952.

Q. What is that, sir? A. It is authorization to secure Social Security Administration records.

Q. I show you a letter dated December 12, 1958, addressed to Mr. Donald McFarland, Supervisor. By whom was that letter signed? A. Lawrence Sturgill.

Q. Did you have occasion to check that signature? A. Yes, I did.

28 Q. I show you a letter dated October 10th, 1958, addressed to Mr. Donald McFarland, Supervisor, Review Unit, Pension Benefits, United Mine Workers of America, Welfare and Retirement Fund. Whose signature is on the bottom of that particular exhibit? A. Lawrence Sturgill.

Q. I show you a document. What is that document? A. Authorization to secure Social Security Administration records.

Q. What signature is contained therein? A. Lawrence Sturgill.

Q. I show you a document dated May 21, 1956, Pikeville, Kentucky, addressed to Mr. Donald McFarland, Supervisor, Review Unit, United Mine Workers Welfare and Retirement Fund, File No. 60242. By whom was that document signed? A. Lawrence Sturgill.

Q. I show you a document dated May 2, 1956, addressed to Mr. Donald McFarland, Supervisor, Review Unit, United Mine Workers Welfare and Retirement Fund. Whose signature is contained in that one? A. Lawrence Sturgill.

Q. I show you a communication, Pikeville, Kentucky, March 1, 1955, addressed to Mr. Donald McFarland,
29 Supervisor, Review Unit, Pension Benefits, Washington, D. C. By whom was that letter signed? A. Lawrence Sturgill.

Q. I show you a communication, dated August 19, 1954, to Mr. Donald McFarland, Review Unit, Pension Benefits, United Mine Workers of America, Welfare and Retirement Fund. Whose signature is contained in that one? A. Lawrence Sturgill.

Q. I show you a letter dated August 10th, 1954, to the same Mr. Donald McFarland, United Mine Workers of America, Welfare and Retirement Fund, Pension File 60242. By whom was that signed? A. Lawrence Sturgill.

Q. I show you a communication, Pikeville, Kentucky, received April 6, 1954, United Mine Workers Welfare and Retirement Fund. Whose signature is on that communication? A. Lawrence Sturgill.

Q. I show you a letter dated December 4, 1953, addressed to the United Mine Workers Welfare and Retirement Fund. By whom was that communication signed? A. Lawrence Sturgill.

Q. Now, having had Defendants' Exhibit No. 5 and Defendants' Exhibit No. 6 brought to your house by me
30 and Defendants' Exhibit No. 8, what did you do, sir?

A. I examined the signatures and writings of Lawrence Sturgill in communications to the United Mine Workers and in the application for pension, and compared them with the writing of the signature "James Sturgill" and the signature "Lawrence Sturgill" on the registration reproductions on Defendants' Exhibit 8.

Q. As a result of your examination of the various documents just identified in Defendants' Exhibit No. 5 and No. 6 and the signature of Lawrence Sturgill and James Sturgill on Defendants' Exhibit No. 8, what professional conclusion did you arrive at? A. That the person who wrote the letters applying for a pension and on these different documents signed "Lawrence Sturgill" did not write the signature "James Sturgill" on the registration card attached to Defendants' Exhibit 8 but did write the signature "Lawrence Sturgill" on the registration attached to Defendants' Exhibit 8.

• • • • •

36 Now, the last three letters are written as a three-letter combination of loops so it is difficult to tell what is intended, "e-l-l" or "l-l-l" or "i-l-l". Sometimes

there is a dot in the example signatures placed over the first of those retraced or looped characters which are all looped in the questioned signature.

Because of these features, not in any one of them but the similar combination in the questioned signature as appears in the examples, I reached the conclusion they were written by the same person and no other.

48

Phillip D. McDermott

called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Imlay:

Q. Mr. McDermott, would you please state your full name and official status? A. Phillip D. McDermott. I am Special Assistant, Navy Yard Annex of Office Operations Services, Veterans Administration.

52 Cross-Examination

By Mr. Carey:

Q. Mr. McDermott, I show you Plaintiff's Exhibit No. 10. Can you tell me the date when that claim was filed with the Veterans Administration?

The Court: Is that No. 10 or No. 9?

Mr. Carey: I am sorry, No. 9, Your Honor.

The Witness: According to this form, the date of claim is 3/31/55.

By Mr. Carey:

Q. That is 10 and a half years ago, is that true? A. Yes, sir.

Q. What does that card reflect as to any military service by the claimant contained in Plaintiff's Exhibit No. 9?

A. Well, it shows that—that is, it is alleged this informa-

tion was taken from the form that Mr. Sturgill filed, 536, and it shows these active duty dates of 4/7/17 to date of discharge, 12/14/17.

Q. Does that card reflect that because of this inquiry or claim that this man ever had any military service with any branch of the United States Army or Navy? A. No, sir, this is not a certification of service.

53 Q. What does that mean on there, what is that writing (indicating)? A. That particular writing says, "No insurance."

Q. And what date is that? A. That is 4/8/55.

Q. What does this say (indicating)? A. That says, "No record, 4/7/55."

Q. What is that writing there (indicating)? A. "No record A file." These are various notations which were placed on this card when it was received in the Central Office, and we matched it against our records. We found no evidence previous to this time and this became the basic record.

Q. That is the only record that you have in the Master File Index of the Veterans Administration? A. Yes, sir.

Q. That only record you have reflects no service by this particular claimant, is that true? A. Not that this record shows that, sir; no, sir.

Q. As of your inquiry, does it reflect any service by this man in the military? A. No. According to our record, we had no prior record of the man.

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54 Redirect Examination

By Mr. Imlay:

Q. Could you state whether or not there has been any final administrative determination to the effect that Mr. Sturgill was not or was in the Service? A. No, sir, this particular record doesn't show that.

Q. The record is still open, then? A. I don't know that the record would be still open because actually that type

of work is done with the Claims Records File, not with this particular record here.

Mr. Imlay: All right. Thank you.

Recross-Examination

By Mr. Carmey:

Q. This is after a period of 10 years and there is no showing of any service by this claimant, is that true? A. There has been no change in this record since he made the original application, sir.

Mr. Carey: That is all I have.

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65

Irving Dachis

called as a witness on behalf of the defendants, having been previously duly sworn, took the witness stand, was examined and testified as follows:

Direct Examination

By Mr. Carey:

Q. Kindly state your full name and occupation for the Court, if you would, please? A. Irving Dachis. I am an attorney.

Q. How do you spell your last name, for the court reporter, please? A. D-a-c-h-i-s.

Q. And what is tyour occupation? A. I am an attorney at the Veterans Benefits Office in Washington, D. C.

Q. Where is that located? A. 1717 Massachusetts Avenue, Northwest.

Q. Are you here pursuant to a subpoena served upon you last week? A. Yes, I am.

Q. Pursuant to that subpoena, what did you bring with you, sir, from the Veterans Administration? A. I brought with me Veterans Administration Claim No. C-18945605, bearing the name of Lawrence, L-a-w-r-e-n-c-e, Sturgill, S-t-u-r-g-i-l-l.

66

Q. Is that the complete and only file that you have on a man identified as Lawrence Sturgill of that claim number in your office? A. That is the complete file in our office, which requisitioned the file for this purpose from the Regional Office in Nashville—Excuse me. Let me check this. Regional Office in Louisville, Kentucky.

Mr. Carrey: That is all I have, Your Honor.

Cross Examination

By Mr. Imlay:

72

Q. Yes.

Now, this entry at the bottom would indicate that
73 a certain service number was assigned to Edison Sturgill, is that correct? A. That is what the service department reported as of this particular inquiry which was made by the Veterans Administration after they obtained the Army serial number from the claimant. This is the serial number they gave and this is the answer they received, that this serial number—Well, let's read the whole thing. Do you mind?

Q. Certainly not. A. It says, "Unable to identify record of Army service for Lawrence Sturgill. Army SN 35776-222"—which is the one he furnished—"is assigned to Edison Sturgill, born July 6, 1917 and draws VA File No. C-19105697," indicating that this is a different person entirely.

The Court: That serial number is allocated to somebody born in 1917?

The Witness: Yes, Your Honor, that is what the service department shows. That particular serial number was assigned to a person named Edison Sturgill, born in 1917, July 6.

74 Redirect Examination

By Mr. Carey:

Q. Mr. Dachis, the serial number given in connection with Edison Sturgill is a World War II serial number, is it not? A. I couldn't say exactly. I can only say that—

Q. Well, his date of birth is—A. His date of birth would indicate that he was a World War II veteran.

• • • • •

Q. Does this file reflect a letter written to Mr. Lawrence Sturgill, Box 409, Pikeville, Kentucky on September 14, 1964? A. Yes, it does.

75 Q. Will you read the first paragraph of that letter, if you will, please? A. (Reading:) "Dear Mr. Sturgill,

"We have once again requested the Service Department to furnish us with your service records based on the information which was submitted on your recent application."

Q. What does the second paragraph say? A. (Reading:) "The Service Department has advised us that they have been unable to identify you as a veteran."

Q. That was September 14, 1964? A. Yes, sir.

Q. There was a prior claim made by him back at an earlier period, was there not? A. Yes.

Q. What is the date of this letter? A. August 19, 1955.

Q. And it is addressed to whom? A. Mr. Lawrence Sturgill, P. O. Box 409, Pikeville, Kentucky.

Q. Will you read the first sentence of that letter addressed to Mr. Sturgill? A. (Reading:) "The Service Department has been unable to identify you as a veteran."

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76 Mr. Carey: Let the record reflect all questions directed to Mr. Dachis, the witness, by both plaintiff's counsel and defendants' counsel referred to Defendants' Exhibit No. 17, which we now offer in evidence.

The Court: Any objection, Mr. Imlay?

Mr. Imlay: I have no objection to the offer, Your Honor. I do want to reserve any argument that I might have as to its relevancy to a subsequent time.

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88 The Deputy Clerk: Plaintiff's Exhibits 13 and 14 marked for identification.

(Affidavit of Rachel Watson and of Jake Johnson were marked Plaintiff's Exhibits 13 and 14, respectively, for identification.)

Mr. Imlay: Just briefly, Your Honor—

Mr. Carey: May I see them?

(Documents shown to opposing counsel.)

89 The Court: I don't think you ought to read those into the record. I think they should be here and subject to cross-examination. The proper way to do this would be by deposition of these people. They haven't been subjected to cross-examination.

Unless the defense counsel has no objection—

Mr. Carey: I am going to object, Your Honor.

My first objection is these affidavits certainly violate due process in the most extraordinary fashion, no opportunity to cross-examine the witness. In fact, one of these that is annexed doesn't even have a signature.

The Court: They are not proper. The proper way to do this would be by interrogatories or by deposition; but to just put in an untested declaration of somebody that no one knows, no.

Mr. Imlay: Your Honor, I might just state for purposes of the record that these affidavits were submitted as being in the same nature as the documents in the administrative record which is here under consideration.

The Court: That is something different. There you have the United States Government keeping records in the ordinary course of business. Presumably, they are keeping accurate and complete records.

Mr. Imlay: Your Honor, I would like to state that
90 we have been at a handicap since we didn't have the
evidence that has been offered by the defendants
prior to this re-opened trial and this is the only way that
we have to introduce evidence other than that contained in
documents that have been submitted.

The Court: You could have done this by way of inter-
rogatories. You could have sent a request to somebody
down wherever it is and asked them to take their deposi-
tions.

Mr. Carey: Your Honor, may I correct the record too?
I think Mr. Imlay's representation is not quite accurate.
He said he just knew about this.

Age has been under consideration for approximately
two years. The prior lawyer who had this case, Mr.
Richard Merrick, I talked to him—and the pretrial so
reflects. Age has been the basic consideration as far as
the plaintiff is concerned. For Mr. Imlay to say at this
late date in the trial that he didn't know about this is not
quite accurate.

Mr. Imlay: Well, it isn't just a question of age, Your
Honor; I also wanted to get in a statement as to the fact
that one of the affiants served with—

Mr. Carey: Objection. Now he is going to read the
affidavit to which I objected.

Mr. Imlay: I will just say generally that one of
91 them goes to Mr. Sturgill's Army service, and I
think this is very vital because—

The Court: Except that it violates all the rules of evi-
dence and all the rules of procedure.

Mr. Imlay: I think, Your Honor, there is a certain
latitude that has been given to some of this documentary
evidence due to the fact that there is an administrative file.
It is before Your Honor, and these are entitled to the
same dignity as other documents in the file.

The Court: I am sorry, Mr. Imlay, I can't see it that
way. If there is an objection, I am going to sustain it.

If there is no objection, I will receive it but I frankly wouldn't give it very much weight since it is not subject to cross-examination.

Mr. Imlay: I will submit them, Your Honor, as an offer of proof.

Mr. Carey: Objection, Your Honor.

The Court: I will sustain the objection.

I would suggest if you want to get that kind of evidence in, the most economical way to do it is to send interrogatories down to the place where the people live and ask somebody to take their testimony.

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(Filed March 9, 1966)

Excerpts from Defendant's Exhibit No. 1

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1950

Effective March 5, 1950, To June 30, 1952

Executed at Washington, D. C., March 5, 1950

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**UNITED MINE WORKERS OF AMERICA
WELFARE AND RETIREMENT FUND OF 1950**

A. It is hereby stipulated and agreed by the contracting parties hereto that there is hereby created a Fund to be designated and known as the "United Mine Workers of America Welfare and Retirement Fund of 1950." During the life of this Agreement, there shall be paid into such Fund by each operator signatory hereto the sum of thirty cents (30¢) per ton of two thousand (2,000) pounds on each ton of coal produced for use or for sale. Such Fund shall have its place of business in Washington, District of Columbia, and it shall be operated by a Board of Trustees, one of whom shall be appointed as a representative of the Employers, one of whom shall be appointed as a representative of the United Mine Workers of America and one of whom shall be a neutral party, selected by the other two. In the

event of resignation, death, inability or unwillingness to serve of the Trustee appointed by the Operators or the Trustee appointed by the United Mine Workers of America, the Operators shall appoint the successor of the Trustee originally appointed by them and the United Mine Workers of America shall appoint the successor of the Trustee originally appointed by it.

The Operators signatory hereto do hereby appoint Charles A. Owen, of New York City, as their representative on said Board of Trustees. The United Mine Workers of America do hereby appoint John L. Lewis, of Washington, D. C., as its representative on said Board of Trustees. It is further stipulated and agreed by the joint contracting parties that Josephine Roche, of Denver, Colorado is appointed as the neutral Trustee. Said three Trustees so named and designated shall constitute the Board of Trustees to administer the Fund herein created.

In the event of a deadlock on the designation or agreement as to any future neutral Trustee, an impartial umpire shall be selected either by agreement of the two Trustees, representatives of the contracting parties hereto, or by petition by either of the contracting parties hereto to the United States District Court for the District of Columbia for the appointment of such an impartial umpire, all as made and provided in Section 302 (c) of the "Labor-Management Relations Act, 1947."

It is agreed by the contracting parties hereto that the Trustees herein provided for shall serve for the duration of this contract and as long thereafter as the proper continuation and administration of said trust shall require.

It is agreed that this Fund is an irrevocable trust created pursuant to Section 302 (c) of the "Labor-Management Relations Act, 1947," and shall endure as long as the purposes for its creation shall exist. Said purposes shall be to make payments from principal or income or both, of

(1) benefits to employees of said Operators, their families and dependents for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or life insurance, disability and sickness insurance or accident insurance; (2) benefits with respect to wage loss not otherwise compensated for at all or adequately by tax supported agencies created by federal or State law; (3) benefits on account of sickness, temporary disability, permanent disability, death or retirement; (4) benefits for any and all other purposes which may be specified, provided for or permitted in Section 302 (c) of the "Labor-Management Relations Act, 1947," as agreed upon from time to time by the Trustees including the making of any or all of the foregoing benefits applicable to the individual members of the United Mine Workers of America and their families and dependents, and to employees of the Operators other than those exempted from this Agreement; and (5) benefits for all other related welfare purposes as may be determined by the Trustees within the scope of the provisions of the aforesaid "Labor-Management Relations Act, 1947." Subject to the stated purposes of this Fund, the Trustees shall have full authority, within the terms and provisions of the "Labor-Management Relations Act, 1947," and other applicable law, with respect to questions of coverage and eligibility, priorities among classes of benefits, amounts of benefits, methods of providing or arranging for provisions for benefits, investment of trust funds, and all other related matters.

The aforesaid Trustees shall designate a portion (which may be changed from time to time) of the payments herein provided, based upon proper actuarial computations, as a separate fund to be administered by the said Trustees herein described and to be used for providing for pensions or annuities for the members of the United Mine Workers of America or their families or dependents and such other

persons as may be properly included as beneficiaries thereunder.

It is further agreed that the detailed basis upon which payments from the Fund will be made shall be resolved in writing by the aforesaid Trustees at their initial meeting, or at the earliest practicable date that may by them thereafter be agreed upon.

Title to all the moneys paid into and or due and owing said Funds shall be vested in and remain exclusively in the Trustees of the Fund, and it is the intention of the parties hereto that said Fund shall constitute an irrevocable trust and that no benefits or moneys payable from this Fund shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void. The moneys to be paid into said Fund shall not constitute or be deemed wages due to the individual mine worker, nor shall said moneys in any manner be liable for or subject to the debts, contracts, liabilities or torts of the parties entitled to such money, i.e., the beneficiaries of said Trust under the terms of this Agreement.

(Filed March 9, 1966)

Defendant's Exhibit No. 2

SECOND MEETING OF THE TRUSTEES, UNITED MINE WORKERS
OF AMERICA WELFARE AND RETIREMENT FUND OF 1950,
APRIL 5, 1950

RESOLUTION No. 10

WHEREAS, the United Mine Workers of America Welfare and Retirement Fund of 1950 has for one of its purposes the payment of pensions to individual members of the United Mine Workers of America, and to employees of the coal operators signatory to the National Bituminous Coal

Wage Agreement of 1950 (hereinafter referred to as the "1950 Agreement") other than those exempted from the 1950 Agreement; and

WHEREAS, the Trustees desire to authorize the continuation of pension payments of ONE HUNDRED DOLLARS (\$100.00) per month to pensioners whose applications have been approved by the Trustees of the 1947 Fund, and to adopt regulations to govern the payment of pensions hereafter;

NOW THEREFORE BE IT RESOLVED, that the Director be and is hereby authorized to continue payment of ONE HUNDRED DOLLARS (\$100.00) per month to pensioners whose applications have heretofore been approved by the Trustees of the 1947 Fund in full force and effect, subject to Paragraphs III and IV of the regulations hereinafter provided, the first payment being for the month of June, 1950 or as soon thereafter as practicable, and shall be subject to amendment, revocation and revision at the discretion of the Trustees;

BE IT FURTHER RESOLVED, that the following regulations shall govern the payment of pensions of ONE HUNDRED DOLLARS (\$100.00) per month to individual members of the United Mine Workers of America, and to employees of the coal operators signatory to the 1950 Agreement other than those exempted from said Agreement, and shall be subject to amendment, revocation and revision at the discretion of the Trustees.

I. ELIGIBILITY

An applicant shall be eligible for a pension if he meets the following requirements:

- A. Attained the age of sixty (60) years or over at the time of his application for pension.
- B. Retired by permanently ceasing work in the Bituminous Coal Industry after May 28, 1946.

- C. Been employed for a period of at least one year in the Bituminous Coal Industry immediately preceding his retirement.
- D. Completed twenty (20) years service in the Coal Industry in the United States, its possessions or territories, or the Dominion of Canada; a year of service being one in which applicant has for more than six months in any calendar year:
 - 1. Worked in a job classified in any National Coal Wage Agreement for an employer in the Coal Industry.
 - 2. Rendered service as an employee of the United Mine Workers of America in the Coal Industry and is not eligible for a pension under the United Mine Workers of America pension or retirement plan.
 - 3. Served in the military service of the United States in any war or national emergency.

Any applicant who meets all requirements of eligibility at any time after May 28, 1946, shall not be subsequently disqualified by returning to work in the Coal Industry for a period of less than one year.

II. PROOF OF ELIGIBILITY

A. Age

- 1. Wherever possible the age of applicant will be verified by the Social Security Administration records.
- 2. Applicant shall be required to submit documentary evidence of probative value to establish his age in cases where the Social Security Administration records do not verify his age as stated on the application for pension.

B. Service

1. The following statements shall be deemed satisfactory proof of service for the period or periods covered by such statements:
 - a. Certification by a Local Union or by Local Unions, or by Districts of the United Mine Workers of America that an applicant served in the Coal Industry.
 - b. Statements by persons who have personal knowledge of applicant's service in the Coal Industry.
 - c. Certified copy or photostatic copy of discharge from a branch of the Defense Department of the United States or statements from the appropriate branch of the Defense Department.
- C. The burden of proving eligibility shall be on the applicant.

III. PAYMENTS

A. General

Payments to pensioners shall be as follows:

1. First payment shall be for the first month after authorization of pension.
2. Last payment shall be for the month in which pensioner dies.
3. Payments shall be payable on the first day of each month at pensioner's last address of record.

B. Suspension

No payment shall be made for any month in which pensioner:

1. Does not reside within the continental limits of United States, its territories or possessions, or the Dominion of Canada.
2. Performs compensated services for an employer in the Coal Industry.
3. Fails to continue to meet requirements of eligibility.

IV. FALSE STATEMENTS

Any Applicant for a pension who knowingly and willfully falsifies any records or makes any false misrepresentations or statements or withholds any information in order to secure a pension or to continue to receive a pension from the Fund shall be barred from receiving any benefits from the Fund; and in any case where payment has been made as a result of such misrepresentations or omissions the individual involved will be required to reimburse the Fund in the amount he received from the Fund.

BE IT FURTHER RESOLVED, That the Director is hereby authorized and directed to activate this Resolution in accordance with its terms and conditions and is empowered to do all things, to perform all necessary acts, and to require the submission of evidence in order to effectuate the purposes of this Resolution.

• • • • •

Excerpts From Defendants Exhibits 6 and 7

APPLICATION FOR PENSION

(Do not write in this space)

District No. PL Local Union No. 8336UNITED MINE WORKERS OF AMERICA
WELFARE AND RETIREMENT FUND
907 FIFTEENTH STREET, N. W.
WASHINGTON 5, D. C.File No. 60212Surname Stanger
X Reference Stanger

1. Date 12-6-1952 Social Security Account No. 408-16-9001
(Enter All Account Numbers)
3. Name of Applicant (Print) DANIEL L. STANGER
(First Name) (Middle) (Last)
4. Post Office Address Delaware J. F. Del.
(Street) (Town or City) (County) (State)
5. Date of Birth Jan 21 1892
(Month) (Day) (Year)
6. Place of Birth OSborn U.S.A.
(Town or City) (State) (Country)
7. If Now Married, Name of Applicant's Wife Special Stanger
(First Name) (Middle) (Last)
8. I have been a member of the United Mine Workers of America (length of time) 18 years
9. Have you ever filed application for a pension with this Fund before? ☐ Yes ☒ No When? Never
10. Have you ever filed application for other benefits with this Fund before? ☐ Yes ☒ No When? Never
11. If "yes," state benefits applied for 160
12. Was your application approved? ☐ Yes ☒ No If "yes," state claim or file No. Never
13. If approved, state amounts of benefits you are receiving \$ 120.00
14. Name of Company where last employed Threaten to Address Pikeville Ky
15. Mine Number 3 Local Union Number 8336
16. Date you began work for this Company April 1961
(Month) (Year)
17. Date you last worked for this Company May 1952
(Month) (Year)
18. Reason for retiring: Failing Vision

WHEN FILLED OUT PLEASE SEND YELLOW AND WHITE COPIES TO U.M.W.A. DISTRICT OFFICE

PHOTOSTAT PHOTOSTAT

19.

PREVIOUS EMPLOYMENT RECORD

(Start with your first employment in the Coal Industry and list all employers up to and including the last.)

NAME OF COAL COMPANY	Mine No.	Local Union No.	LOCATION OF LOCAL UNION	Date Employed				Type of Work
				From	To	From	To	
			Years	Months	Yr.	Months	Yr.	
Kingston Coal Co.	1	11	Kingston, Pa.	1911	1	1	1	1
Kingston Coal Co.	1	11	Kingston, Pa.	1912	1	1	1	1
Kingston Coal Co.	2	11	Kingston, Pa.	1913	1	1	1	1
Kingston Coal Co.	1	11	Kingston, Pa.	1914	1	1	1	1
Kingston Coal Co.	1	11	Kingston, Pa.	1915	1	1	1	1
Kingston Coal Co.	1	11	Kingston, Pa.	1916	1	1	1	1
Kingston Coal Co.	1	11	Kingston, Pa.	1917	1	1	1	1
Kingston Coal Co.	1	11	Kingston, Pa.	1918	1	1	1	1
Kingston Coal Co.	1	11	Kingston, Pa.	1919	1	1	1	1
Kingston Coal Co.	1	11	Kingston, Pa.	1920	1	1	1	1

Please Fill in the Above Completely. If More Space Is Needed Use Separate Sheet.

20. Names and addresses of two or more persons—preferably members of the United Mine Workers of America—who had personal knowledge of your service in the Coal Industry at each location where you worked before becoming a member of the United Mine Workers of America.

Name	John	(First)	Truman	(Last)
Address	Kingston	(Town or City)	Pa.	(State)
Name	Dick	(First)	Kingston	(Last)
Address	Kingston	(Town or City)	Pa.	(State)
Name	Walter	(First)	Cassidy	(Last)
Address	Kingston	(Town or City)	Pa.	(State)
Name	Frank	(First)	Winters	(Last)
Address	Little River	(Town or City)	Pa.	(State)

21. Do you claim service in the Land or Naval Forces of the United States during a period of War or National Emergency which was preceded by service in the Coal Industry? (Yes or No)

(Do not fill in schedule below if you have served twenty (20) years in active mining work)

Branch of Service Army, Navy, Air Force, Marine Corps or Coast Guard	Rank	Serial No.	Date and Place of Entry	Date and Place of Discharge

If more space is needed use separate sheet.

22.

CERTIFICATION BY APPLICANT

I certify that the statements made by me in this application are true to the best of my knowledge and belief.

SIGNATURE OF APPLICANT

[Signature]
(Sign in ink—DO NOT print or stamp)

23.

CERTIFICATE OF LOCAL UNION

This is to certify that the facts stated herein are true and correct to the best of our knowledge and belief, and the above applicant was a member of Local Union No. 8336 located at Wilmington, N.C., as of (latest date) 6 Dec 1952, has been a member of this Local Union since Feb 12 1951 (Month) (Day) (Year) and that according to our records he has worked regularly in the Coal Industry since Feb 12 1951 and was employed in the Coal Industry for a period of at least one year immediately preceding the date of his retirement, performing the duties of miner (Job classification)

[Signature]
President, L. U. No. _____

[Signature]
Vice-President

[Signature]
Financial Secretary

[Signature]
Secretary's Address

Place
Union Seal
Here

24.

CERTIFICATE OF DISTRICT NO. 30

This is to certify that applicant is a member in good standing of the United Mine Workers of America, and that the facts stated herein are true to the best of our knowledge and belief, and that proof as to service of applicant has been obtained and is attached hereto.

[Signature]
(District Secretary)

IMPORTANT: APPLICANT MUST FILL OUT AND SIGN BOTH COPIES OF THE FORMS ON THE FOLLOWING SHEET!

12

3 AUTHORIZATION TO SECURE SOCIAL SECURITY ADMINISTRATION RECORDS

Your Social Security Account Number 4-00-11-705-1

Print Your Name STANLEY (First) STANLEY (Middle) STANLEY (Last)

State Date of Your Birth June (Month) 24 (Day) 1894 (Year)

I hereby authorize the Social Security Administration to make available to the United Mine Workers of America Welfare and Retirement Fund any information contained in my Social Security Account File.

Applicant Sign Here: Stanley
(Sign your name in ink—DO NOT PRINT OR STAMP)

(DO NOT WRITE IN THIS SPACE)

Social Security Administration:
Please furnish a copy of the wage record and the month and year of birth of the above named individual.

United Mine Workers of America Welfare and Retirement Fund.

United Mine Workers of America Welfare and Retirement Fund

907 Fifteenth Street, N. W., Washington 5, D. C.

Age for the above stated in accordance with Social Security Records _____ (Month) _____ (Year) of birth.

A copy of the wage record is attached.

(Social Security Administration)

APPLICATION FOR PENSION

(Do not write in this space)

District No. 6 Local Union No. 1004

UNITED MINE WORKERS OF AMERICA

WELFARE AND RETIREMENT FUND

JAN 2 1953

907 FIFTEENTH STREET, N.W.

WASHINGTON 5, D. C.

File No. 60242

Surname _____

X Reference DE

1. Date 3-2-1953 2. Social Security Account No. 428-10-7-77
(State All Account Numbers)
3. Name of Applicant (Print) John J. Pollock (First Name) (Middle) (Last)
4. Post Office Address 151-150 St. Pollock (Street) (Town or City) (County) (State)
5. Date of Birth June 25 1893 (Month) (Day) (Year) Age 60
6. Place of Birth C. 24 (Town or City) (State) (Country)
7. If Now Married, Name of Applicant's Wife Phyllis Pollock (First Name) (Middle) (Last) Age 65
8. I have been a member of the United Mine Workers of America (length of time) 15 years
9. Have you ever filed application for a pension with this Fund before? ☒ Yes ☐ No When? 12-1-1952
10. Have you ever filed application for other benefits with this Fund before? ☐ Yes ☒ No When? _____
11. If "yes," state benefits applied for _____
12. Was your application approved? ☐ Yes ☐ No If "yes," state claim or file No. _____
13. If approved, state amounts of benefits you are receiving \$ _____
14. Name of Company where last employed Thompson Address Pollock
15. Mine Number 1 Local Union Number 1004
16. Date you began work for this Company Jan 1928 (Month) (Year)
17. Date you last worked for this Company Dec 1952 (Month) (Year)
18. Reason for retiring: Miss Steppage

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Form 1-5-53 (Revised 12-2-52)

PHOTOSTAT

18

19.

PREVIOUS EMPLOYMENT RECORD

(Start with your first employment in the Coal Industry and list all employers up to and including the last.)

NAME OF COAL COMPANY	Mine No.	Local Union No.	Location or Local Union	Date Employed				Type of Work
				From	To	Month	Yr.	
Johnston Coal Co.	1	1	Johnston, Pa.	1910	1911	12	1911	Under
Johnston Coal Co.	1	1	Johnston, Pa.	1911	1912	12	1912	Under
Johnston Coal Co.	1	1	Johnston, Pa.	1912	1913	12	1913	Under
Johnston Coal Co.	1	1	Johnston, Pa.	1913	1914	12	1914	Under
Johnston Coal Co.	1	1	Johnston, Pa.	1914	1915	12	1915	Under
Johnston Coal Co.	1	1	Johnston, Pa.	1915	1916	12	1916	Under

Please Fill in the Above Completely. If More Space Is Needed Use Separate Sheet.

20. Names and addresses of two or more persons—preferably members of the United Mine Workers of America—who had personal knowledge of your service in the Coal Industry at each location where you worked before becoming a member of the United Mine Workers of America.

Name	Johnston	(First)	(Middle)	(Last)
Address	Johnston, Pa.	(Town or City)		
Name	Johnston	(First)	(Middle)	(Last)
Address	Johnston, Pa.	(Town or City)		
Name	Johnston	(First)	(Middle)	(Last)
Address	Johnston, Pa.	(Town or City)		
Name	Johnston	(First)	(Middle)	(Last)
Address	Johnston, Pa.	(Town or City)		

21. Do you claim service in the Land or Naval Forces of the United States during a period of War or National Emergency which was preceded by service in the Coal Industry? (Yes or No)

(Do not fill in schedule below if you have served twenty (20) years in active mining work)

Branch of Service Army, Navy, Air Force, Marine Corps or Coast Guard	Rank	Serial No.	Date and Place of Entry	Date and Place of Discharge

If more space is needed use separate sheet.

22.

CERTIFICATION BY APPLICANT

I certify that the statements made by me in this application are true to the best of my knowledge and belief.

SIGNATURE OF APPLICANT

[Signature]
(Sign in ink—DO NOT print or stamp)

23.

CERTIFICATE OF LOCAL UNION

This is to certify that the facts stated herein are true and correct to the best of our knowledge and belief, and the above applicant was a member of Local Union No. 8336 located at Glennville, Ohio as of (latest date) March 7 1953, has been a member of this Local Union since 2 19 1950
(Month) (Day) (Year)

and that according to our records he has worked regularly in the Coal Industry since 1915 and was employed in the Coal Industry for a period of at least one year immediately preceding the date of his retirement, performing the duties of miner
(Job classification)

[Signature]
President, L. U. No. _____

[Signature]
Vice-President

[Signature]
Financial Secretary

[Signature]
Secretary's Address

Place
Union Seal
Here

24.

CERTIFICATE OF DISTRICT NO. 10

This is to certify that applicant is a member in good standing of the United Mine Workers of America, and that the facts stated herein are true to the best of our knowledge and belief, and that proof as to service of applicant has been obtained and is attached hereto.

[Signature]
District Secretary

IMPORTANT: APPLICANT MUST FILL OUT AND SIGN BOTH COPIES OF THE FORMS ON THE FOLLOWING SHEET

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19.

PREVIOUS EMPLOYMENT RECORD

(Start with your first employment in the Coal Industry and list all employers up to and including the last.)

NAME OF COAL COMPANY	Mine No.	LOCAL Union No.	Location of Local Union	Date Employed				Type of Work
				From	To	From	To	
Spencer Coal Co.	1	1	For Union	1910	1911			Leader
Spencer Coal Co.	1	1	For Union	1911	1912			Leader
Spencer Coal Co.	1	1	For Union	1912	1913			Leader
Spencer Coal Co.	1	1	For Union	1913	1914			Leader
Spencer Coal Co.	1	1	For Union	1914	1915			Leader
Spencer Coal Co.	1	1	For Union	1915	1916			Leader
Spencer Coal Co.	1	1	For Union	1916	1917			Leader
Spencer Coal Co.	1	1	For Union	1917	1918			Leader
Spencer Coal Co.	1	1	For Union	1918	1919			Leader
Spencer Coal Co.	1	1	For Union	1919	1920			Leader

Please Fill in the Above Completely. If More Space Is Needed Use Separate Sheet.

20. Names and addresses of two or more persons—preferably members of the United Mine Workers of America—who had personal knowledge of your service in the Coal Industry at each location where you worked before becoming a member of the United Mine Workers of America.

Name: Robert (First) 1210 - K. K. K. (Last)
 Address: 1210 - K. K. K. (Town or City) Pa. (State)
 Name: Robert (First) 1210 - K. K. K. (Last)
 Address: 1210 - K. K. K. (Town or City) Pa. (State)
 Name: Robert (First) 1210 - K. K. K. (Last)
 Address: 1210 - K. K. K. (Town or City) Pa. (State)
 Name: Robert (First) 1210 - K. K. K. (Last)
 Address: 1210 - K. K. K. (Town or City) Pa. (State)

21. Do you claim service in the Land or Naval Forces of the United States during a period of War or National Emergency which was preceded by service in the Coal Industry (Yes or No)

(Do not fill in schedule below if you have served twenty (20) years in active mining work)

Branch of Service Army, Navy, Air Force, Marine Corps or Coast Guard	Rank	Serial No.	Date and Place of Entry	Date and Place of Discharge

If more space is needed use separate sheet.

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from the original

22.

CERTIFICATION BY APPLICANT

I certify that the statements made by me in this application are true to the best of my knowledge and belief.

SIGNATURE OF APPLICANT

James J. Murphy
(Sign in ink—DO NOT print or stamp)

23.

CERTIFICATE OF LOCAL UNION

This is to certify that the facts stated herein are true and correct to the best of our knowledge and belief, and the above applicant was a member of Local Union No. 8736 located at St. Louis, Mo. as of (latest date) March 7 1953, has been a member of this Local Union since 2 10 1950
(Month) (Day) (Year)

and that according to our records he has worked regularly in the Coal Industry since 1915, and was employed in the Coal Industry for a period of at least one year immediately preceding the date of his retirement, performing the duties of miner
(Job classification)

William F. H.
 President, L. U. No. _____

Bill H. H.
 Vice-President

Charlie Shoffner
 Financial Secretary

Wm. H. H.
 Secretary's Address

Place
 Union Seal
 Here

24.

CERTIFICATE OF DISTRICT NO. 10

This is to certify that applicant is a member in good standing of the United Mine Workers of America, and that the facts stated herein are true to the best of our knowledge and belief, and that proof as to service of applicant has been obtained and is attached hereto.

Tom L. L.
 District Secretary

IMPORTANT: APPLICANT MUST FILL OUT AND SIGN BOTH COPIES OF THE FORMS ON THE FOLLOWING SHEET.

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25 AUTHORIZATION TO SECURE SOCIAL SECURITY ADMINISTRATION RECORDS

Your Social Security Account Number 4-2-16-7687

Print Your Name John Doe Smith John
(First) (Middle) (Last)

State Date of Your Birth 1-1-22
(Month) (Day) (Year)

I hereby authorize the Social Security Administration to make available to the United Mine Workers of America Welfare and Retirement Fund any information contained in my Social Security Account File.

Applicant Sign Here John Doe
(Sign your name in ink—DO NOT PRINT OR STAMP)

(DO NOT WRITE IN THIS SPACE)

Social Security Administration:

Please furnish a copy of the wage record and the month and year of birth of the above named individual.

United Mine Workers of America Welfare and Retirement Fund.

United Mine Workers of America Welfare and Retirement Fund
907 Fifteenth Street, N. W., Washington 5, D. C.

Age for the above stated in accordance with Social Security Records _____ of birth.
(Month) (Year)

A copy of the wage record is attached.

(Social Security Administration)

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FILED-200
Form 200-20
2-2-20

U. S. DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS
WASHINGTON 25, D. C.

360-670

Re:

Laurence Sturgill
P.O. Box 409
Pikeville, Kentucky

The following information, including spelling of name, relationship, age, etc. is an EXACT COPY of the census record as reported by the census taker on the original schedule.

Census of 1900, taken as of June 1

District 5

County Floyd State Kentucky

Name	Relation-ship	Age	Month and year of birth	Place of birth	Citizenship
Sturgill, James L.	Head				
- Emily E.	Wife				
- Derinda M.	Daughter				
- Samuel J.	Son				
- Joseph M.	Son				
- James D.	Son	13	July 1886	Kentucky	
- Patience	Daughter				
- Elizabeth	Daughter				
- George C.	Son				
- Daniel L.	Son				
- Lucie	Daughter				



The above information is furnished upon application with the understanding that in no case shall the information furnished be used to the detriment of the person or persons to whom the information relates, in accordance with Title 13, United States Code, Section 8.

The Bureau of the Census does not issue birth certificates, but this record is often accepted in place of one.

U.S. GOVERNMENT PRINTING OFFICE : 1900 O - 10000

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U. S. DEPARTMENT OF COMMERCE
BUREAU OF IMMIGRATION
WASHINGTON, D. C.

760-670

Re:

Lawrence Sturgill
P.O. Box 409
Falmville, Kentucky

The following information, including spelling of name, relationship, age etc., is an EXACT COPY of the census record as reported by the person taken on the original schedule.

Census of 1910 taken as of April 15, 1910

Married

County Falm State Kentucky

Name	Relationship	Age	Place of Birth	Citizenship
Sturgill, James L.	Head			
- Emily	Wife			
- Lucile	Daughter			
- George	Son			
- Lawrence	Son	11	Kentucky	
- Lucian	Daughter			

Was reported to the Census Bureau



The above information is furnished upon application with the understanding that in no case shall the information furnished be used to the detriment of the person or persons to whom the information relates, in accordance with Title 18, United States Code, Section 8.

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FD-15-001
Rev. 7-1-60
(7-1-60)

750-735

U. S. DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS
WASHINGTON 25, D. C.

December 27, 1962

Re:

Lawrence Sturgill
P. O. Box 409
Pikeville, Ky.

The following information, including spelling of name, relationship, age, etc., is an EXACT COPY of the census record as reported by the census taker on the original schedule.

Census of 1920, taken as of January 1

County Pike State Kentucky

Name	Relationship	Age	Place of birth	Citizenship
Sturgill, Lawrence Virgie and family	Husband Wife	32	Kentucky	

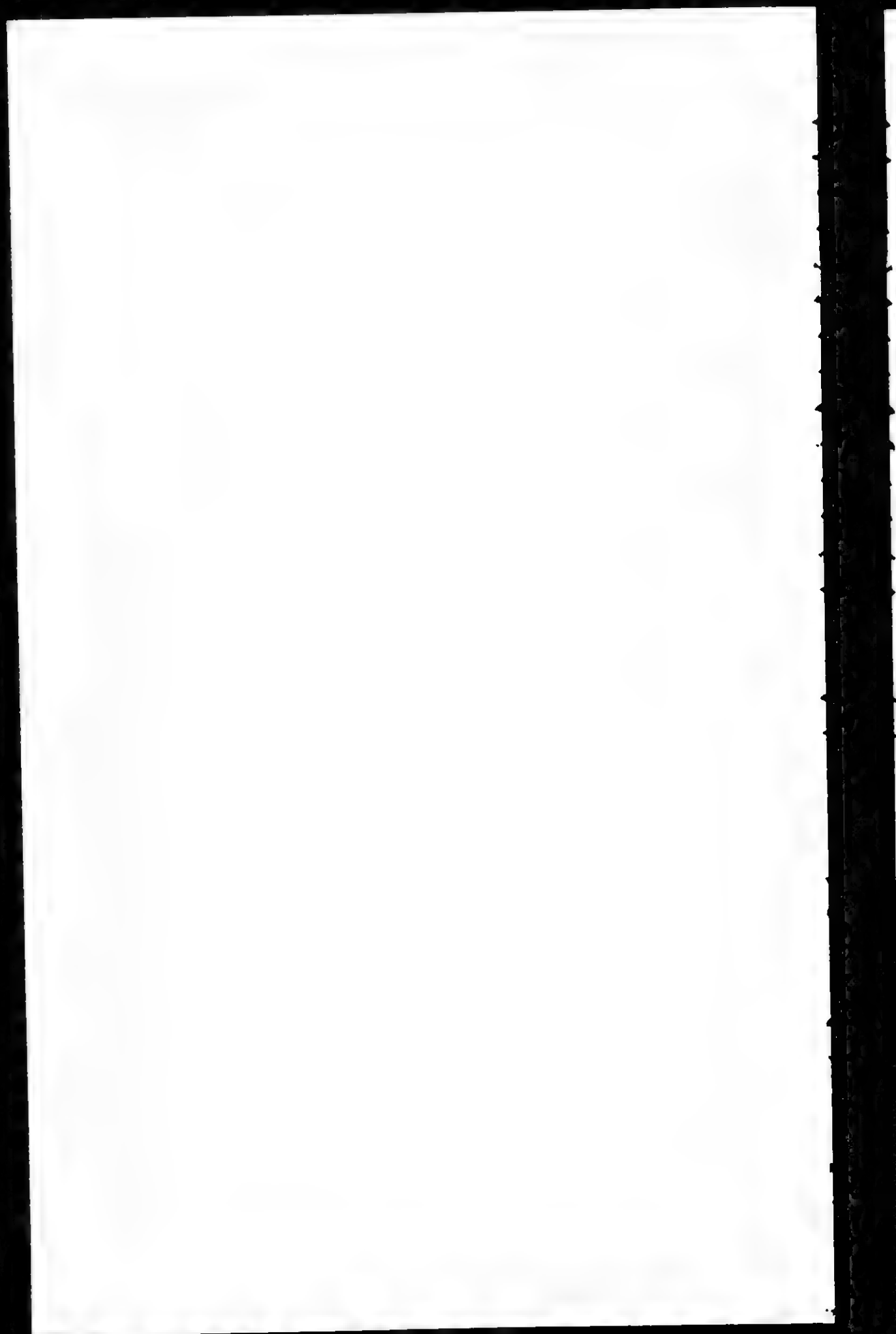


The above information is furnished upon application with the understanding that in no case shall the information furnished be used to the detriment of the person or persons to whom the information relates, in accordance with Title 13, United States Code, Section 8.

The Bureau of the Census does not issue birth certificates, but this record is often accepted in place of one.

U.S. GOVERNMENT PRINTING OFFICE: 1960-0-500000

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RECEIVED from S. M. Cecil, Notary Public, and filed
this 21 day of June, 1933

EARL SCOTT, Clerk
By E. B. Blackburn, D.C.

Case No. 4724-E (30B)

The depositions of LAWRENCE STURGELL &c., taken on the 20th day of June 1933, at the law office of J. M. Bolling, in the town of Pikeville, Pike County, Kentucky, to be read as evidence in an action between Flossie Sturgell, plaintiff and Lawrence Sturgell, Defendant, pending in the Pike Circuit Court.

Present—defendant in person and J. M. Bolling, his attorney.

Plaintiff was not present in person nor represented by attorney.

The first witness, Lawrence Sturgell, first being duly sworn, deposes and say.

Q. State your age, residence and occupation? A. I am 31 year old, live in Pike County, Ky., and am a common laborer.

Q. You are the defendant in this action? A. Yes sir.

Q. You may tell the court how it was that you made a deed to the plaintiff to the house and lot where you now reside over here at the Mouth of Ferguson Creek in Pike County?

• • • • •

STATE OF KENTUCKY
COUNTY OF FLOYD

I, C. OLLIE ROBINSON, Clerk of the County Court in and for the County and State aforesaid, do hereby certify that a SCHOOL CENSUS RECORD bearing dates 1900, 1901 & 1902,

filed and constituting an original and permanent record in this office shows the following:

Name of Child	Date of Birth	Age
Maud Sturgill	Mar. 8, 1882	19
Sam'l J. Sturgill	Jan. 16, 1883	17
Joseph Sturgill	Mar. 17, 1884	16
James Sturgill	July 9, 1886	14
Patience Sturgill	May 27, 1888	13
Lizzie Sturgill	Aug. 22, 1890	10
George Sturgill	Oct. 28, 1892	8
Daniel L. Sturgill	June 24, 1894	6

Name of Parent or Gdn. James L. Sturgill
File =. 369, 345, & 395 Lines 37, 8, & 13.

• • • • •

FILED This 17 day of Jan. 1930
Earl Scott, Clerk
By E. B. Blackburn, D.C.

PIKE CIRCUIT COURT

3785

VIRGIE STURGILL, *Plaintiff*

v.

LAWRENCE STURGILL, *Defendant*

PETITION IN EQUITY

The plaintiff states that she usually resides in Pike County, Kentucky, and has resided therein practically all her life; that she is an actual, bona-fide citizen thereof and maintains an actual residence therein; that she and the defendant were lawfully married to each other on or about September 5, 1917, in Pike County, Kentucky, and where they continued to live together as husband and wife until

the acts hereinafter set out, and in the petition, complained of, occurred.

• • • • •
Plaintiff further states that there was born to their said marriage the following infant children, to-wit:

Edison Sturgill, age 12 years,
Marie Sturgill, age 9 years
Reed Sturgill, age 6 years
Gyrod Sturgill, age 4 years
Loueva Sturgill, age 20 months

• • • • •

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COMMONWEALTH OF KENTUCKY
 State Department of Health, Frankfort
 NO. 58081 BUREAU OF VITAL STATISTICS
 CERTIFIED PHOTOSTATIC COPY OF
 RECORD of BIRTH

COMMONWEALTH OF KENTUCKY
 STATE BOARD OF HEALTH
 CERTIFICATE OF BIRTH

NAME William H. Taylor
 SEX Male
 DATE OF BIRTH 1963
 PLACE OF BIRTH Frankfort, Kentucky
 COLOR OF HAIR Brown
 COLOR OF EYES Blue
 OCCUPATION Student

CERTIFICATE OF ATTENDING PHYSICIAN

I, Strawn W. Taylor, State Registrar, hereby certify that the above is a true and correct photostatic copy of the certificate of birth of the person therein named, and that the original certificate is registered under the above file number.

In testimony whereof I have hereunto subscribed my name and caused the official seal of the State Department of Health to be affixed at Frankfort, Kentucky, this 15 day of Oct, 1963.

Strawn W. Taylor
 Strawn W. Taylor, State Registrar

COMMONWEALTH OF KENTUCKY
 State Department of Health, Frankfort, KY. BUREAU OF VITAL STATISTICS
 NO. 58082
 CERTIFIED PHOTOSTATIC COPY OF
 RECORD of BIRTH

COMMONWEALTH OF KENTUCKY
 STATE BOARD OF HEALTH
 CERTIFICATE OF BIRTH

Paul Stewart

Thomas W. Taylor

1963

15

1963

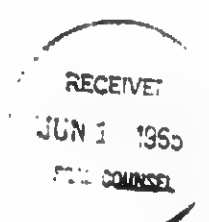

I, Strawn W. Taylor, State Registrar, hereby certify that the above is a true and correct photostatic copy of the certificate of birth of the person therein named, and that the original certificate is registered under the above file number.

In testimony whereof I have hereunto subscribed my name and caused the official seal of the State Department of Health to be affixed at Frankfort, Kentucky, this 15 day of Oct, 1963.

Strawn W. Taylor
 Strawn W. Taylor, State Registrar

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 from the original

Excerpts From Defendants Exhibit 8

GENERAL SERVICES ADMINISTRATION Federal Records Center 221 St. Joseph Avenue East Point, Georgia TRANSMITTAL OF REQUESTED RECORDS	Transmittal Date 6/11/65 Reference Number LNCR Date of Request
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>Mr. Thomas G. McMillan United Mineworkers Welfare & Retirement Fund 907 15th Street, N. W. Washington, D. C.</p> </div> <div style="width: 45%;"> <p>RE: World War I Selective Service Record of James D. Sturgell, Lawrence Sturgell, James L. and Daniel L. Sturgell dob(?) 6/30/80, 12/1/87, 6/94, 7/96 Osborne, Floyd County, Ky. Pikeville, Pike County, Ky.</p> </div> </div>	
<p><input type="checkbox"/> The material requested by you is attached. Please return to the Records Center when it has served its purpose.</p> <p><input type="checkbox"/> The attached correspondence is forwarded for completion and direct reply to the requestor.</p> <p><input type="checkbox"/> A thorough search of _____ files did not reveal the requested record.</p> <p><input type="checkbox"/> An examination of the above subject matter has been made and the following information is available:</p> <p>As requested in your telephone call today a thorough search of the above names Sturgell and Sturgill, were made in the Floyd & Pike County records of subject U. S. Government Agency. We are enclosing a facsimile of the only records located, both from Pike County records, namely:</p> <ol style="list-style-type: none"> 1. James D. Sturgell Pikeville, Ky. 2. Lawrence Sturgell Kewanee, Ky. <p>Please advise if we may serve you further.</p> <p>Enclosures</p> <div style="text-align: right; margin-top: 20px;">   Chief, Federal Records Center, GSA 1557 St. Joseph Avenue East Point, Georgia </div>	
Signature	Title

Form RM-576 February 1960

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Form 1 1964 REGISTRATION CARD

1 Name as full *James D. Sturgell* (Last name) (First name) (Middle name) *30*

2 Name Address *Pikeville Ky* (City) (State) (Zip)

3 Date of birth *July 9 1886* (Month) (Day) (Year)

4 Are you (1) a naturalized citizen, (2) an alien, (3) or have you declared your intention (specify which)? *Natural born*

5 Where were you born? *Ky 24.8 B.* (City) (State) (County)

6 If not a citizen, of what country are you a citizen or subject?

7 What is your present race, occupation, or office? *Farmer*

8 In what employed? *Self*

9 Have you a father, mother, wife, child under 12, or a sister or brother under 12, totally dependent on you for support (specify which)? *Wife & 2 children*

10 Married or single (which)? *Married* Race (specify which)? *Caucasian*

11 What military service have you had? (Specify branch, service, and dates)

12 Do you have complete (specify which)? *Wife & children dependent*

I affirm that I have verified above answers and that they are true.

James Sturgell

GENERAL SERVICES ADMINISTRATION

Region 4

Federal Records Center

East Point, Georgia

R. G. 163: RECORDS OF THE SELECTIVE
SERVICE SYSTEM (1917-1919): Draft
registration Cards of Local Boards.

Date of Registration: June 5, 1917

BEST COPY

from the original

171-A Registration Card

1 Name in full Lawrence S. Sturgell
(Print name)

2 Home address Linwood Ky
(No.) (Appt.) (City or town) (State)

3 Date of birth Jan 27 1897
(Month) (Day) (Year)

4 Where were you born? Linwood Ky USA
(City or town) (State) (Nation)

5 I am ☒ 1. A native of the United States.
☐ 2. A native of Canada.
☐ 3. A native of Mexico.
☐ 4. A native of Central America.
☐ 5. A native of the West Indies.
(Strike out lines or words not applicable)

6 If not a citizen, of what Nation are you a citizen or subject?

7 Father's birthplace Linwood Ky USA
(City or town) (State or Province) (Nation)

8 Name of employer Kewanee Coal Co
Place of employment Kewanee Ky
(No.) (Street) (City or town) (State)

9 Name of nearest relative Virgie Sturgell
Address of nearest relative Kewanee Ky
(No.) (Street) (City or town) (State or Nation)

10 Race White
(Strike out words not applicable)

I affirm that I have verified above answers and that they are true.

Lawrence S. Sturgell
(Signature of Master of Registration)

P. M. O. O.
Form 1 (blue)

REGISTRATION CARD. 7-578

If person is of African descent, fill in race.

GENERAL SERVICES ADMINISTRATION

Region 4
Federal Records Center
East Point, Georgia

R. G. 103: RECORDS OF THE SELECTIVE
SERVICE SYSTEM (1917-1919): Draft
Registration Cards of Local Boards.

Date of Registration: August 24, 1918

AVAILABLE

bound volume

Excerpts From Defendants Exhibit 10

AGC-SS 201 Sturgill, Lawrence
(26 Sep 55)

5 October 1955

Honorable Carl D. Perkins
House of Representatives
Sarrington 25, D. C.

Dear Mr. Perkins:

I am referring to your letter of 26 September 1955 in behalf of Mr. Lawrence Sturgill, Pikeville, Kentucky.

As you were previously advised in my letter of 31 August 1955, from the information furnished this office is unable to identify a record of military service for a Lawrence Sturgill who can be identified as the subject of your inquiry. In addition, a report has not been obtained from the Federal Bureau of Investigation that a comparison of Mr. Sturgill's fingerprints with those on file in that Agency for former members of the Armed Forces has been made but that no corresponding prints were located.

I regret that a more favorable reply is not possible.

Sincerely yours,

Enc.
Inclosure - Ltr 16 Aug 55

W. J. Sweeney
DAVID W. SWEENEY
Colonel, AGC
Commanding

GLENN W. SWEENEY
MAJOR, AGC



Permanet
Refile in WW I
Costa/Corr-Sp/JWI

BEST COPY
from the original

GENERAL SERVICES ADMINISTRATION



RECEIVED

JUN 10 '65

LEGAL COUNSEL

Military Personnel Records Center

9700 Page Boulevard, St. Louis, Missouri, 63132

June 8, 1965

RECEIVED

JUN 10 '65

LEGAL COUNSEL

IN REPLY REFER TO: GMPHRA

Sturgill, Lawrence D.

United Mine Workers of America
Welfare & Retirement Fund, Rm 305
907 Fifteenth Street, N.W.
Washington, D. C. 20005

Gentlemen:

The item(s) checked below replies to your letter of May 18, 1965.

☐ The fingerprints submitted were compared with those of former Army personnel filed in the Federal Bureau of Investigation and no corresponding prints were located.

☐ At time of registration,

gave date and place of birth as
and his residence as

☒ No record has been found to show that Lawrence D. Sturgill was inducted into the Army or otherwise entered the military service.

☐ The Selective Service Local Board records for
do not contain a record of his
registration.

☐ As (you, he) did not acquire any status in the military service by reason of (your, his) registration under the Selective Service Act, there is no authority for issuing you the desired certificate.

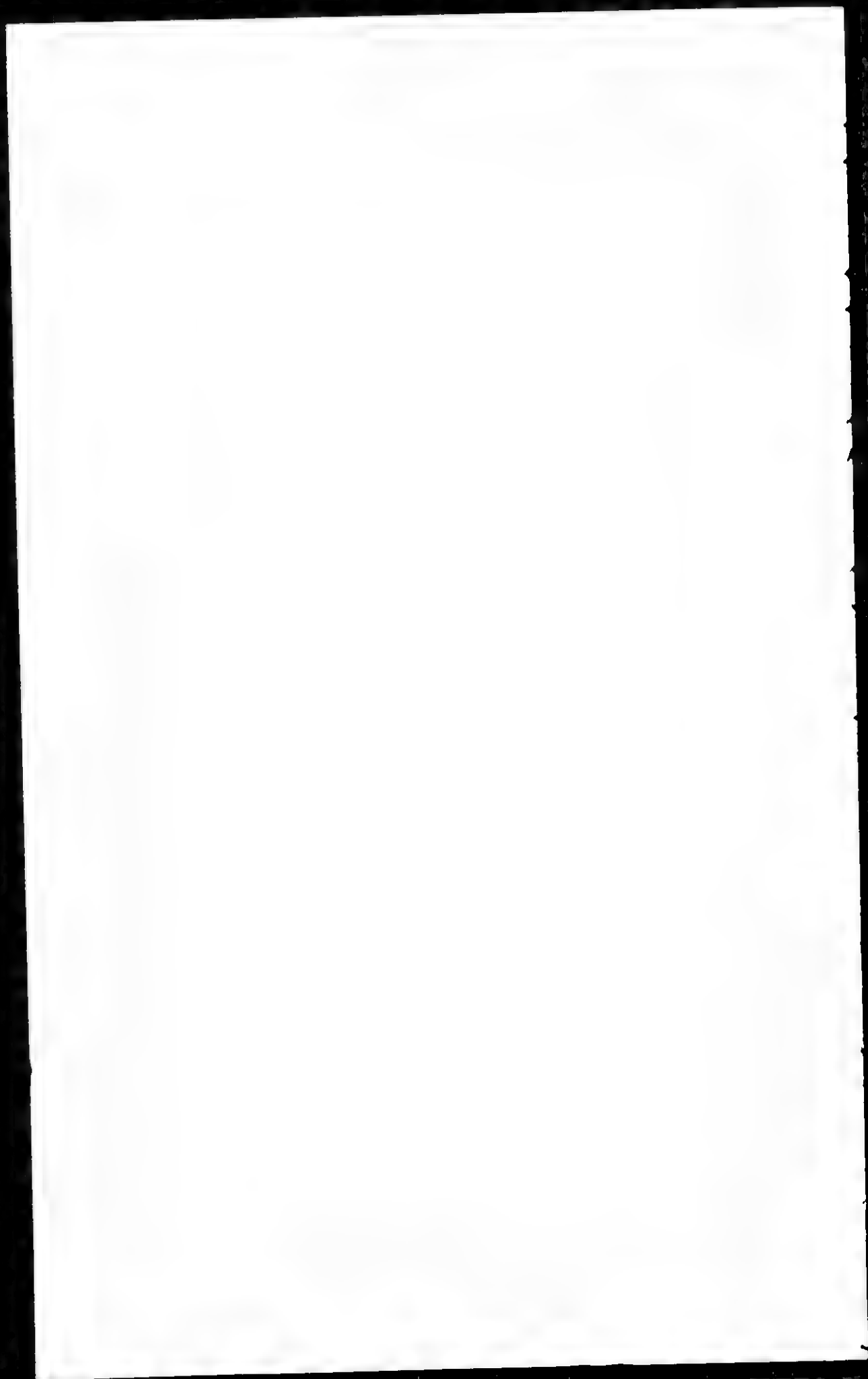
☐ A further effort will be made to locate a record of service if additional identifying information can be furnished such as:

✓ Copies of available papers are enclosed.

Sincerely yours,

John W. Gross

Chief, Reference Service Branch



UNITED MINE WORKERS OF AMERICA
Welfare and Retirement Fund
907 Fifteenth Street, Northwest
Washington, D. C. 20005

May 18, 1965

General Services Administration
Military Personnel Records Center
97100 Page Boulevard
St. Louis, Missouri

Attention: Mrs. Gordon, Information Office

Dear Mrs. Gordon:

Pursuant to your telephone conversation with Mr. McMillan of this office, May 17, 1965, you are requested to advise whether a search of military records of World War I has ever been made for a service record of Lawrence Sturgill, James L. Sturgill, or Daniel Lawrence Sturgill of either Pikeville, Pike County, Kentucky, or Osborne, Floyd County, Kentucky.

If such a search has been made, I should appreciate knowing the information with which you were furnished, by whom and the dates the search requests were made, the date of birth and period of service claimed, the procedure taken by your office and the Federal Bureau of Investigation to establish the identity, and whether your office has, as a result of its search, been able to identify any record of military service during World War I for the afore-mentioned individual or individuals. I should also like to know what those individuals were advised by your office with respect to the results of such search.

Your cooperation in furnishing us with this information at your earliest convenience will be most appreciated. If there are any charges for this service, please so advise and payment will be tendered forthwith.

Very truly yours,

VJM:TGM:hh

COPY

Pikeville, Kentucky

S-16-1955

STURGILL, Lawrence
C-18 945 605

Hon. Carl D. Perkins
Member U. S. Congress
Washington, D. C.

Dear Congressman Perkins:

I have filed for a pension with the Veterans
Administration. They claim that they can't find
where I was in the Army.

I would like for you to check with the Adjutant General
of the U. S. Army for my Army record.

I entered the U. S. Army 4-7-1917 and was
Discharged 12-14-1917

I was born 6-30-1888 Floyd County Kentucky

I want you to let me know the following

When I entered the U. S. Army

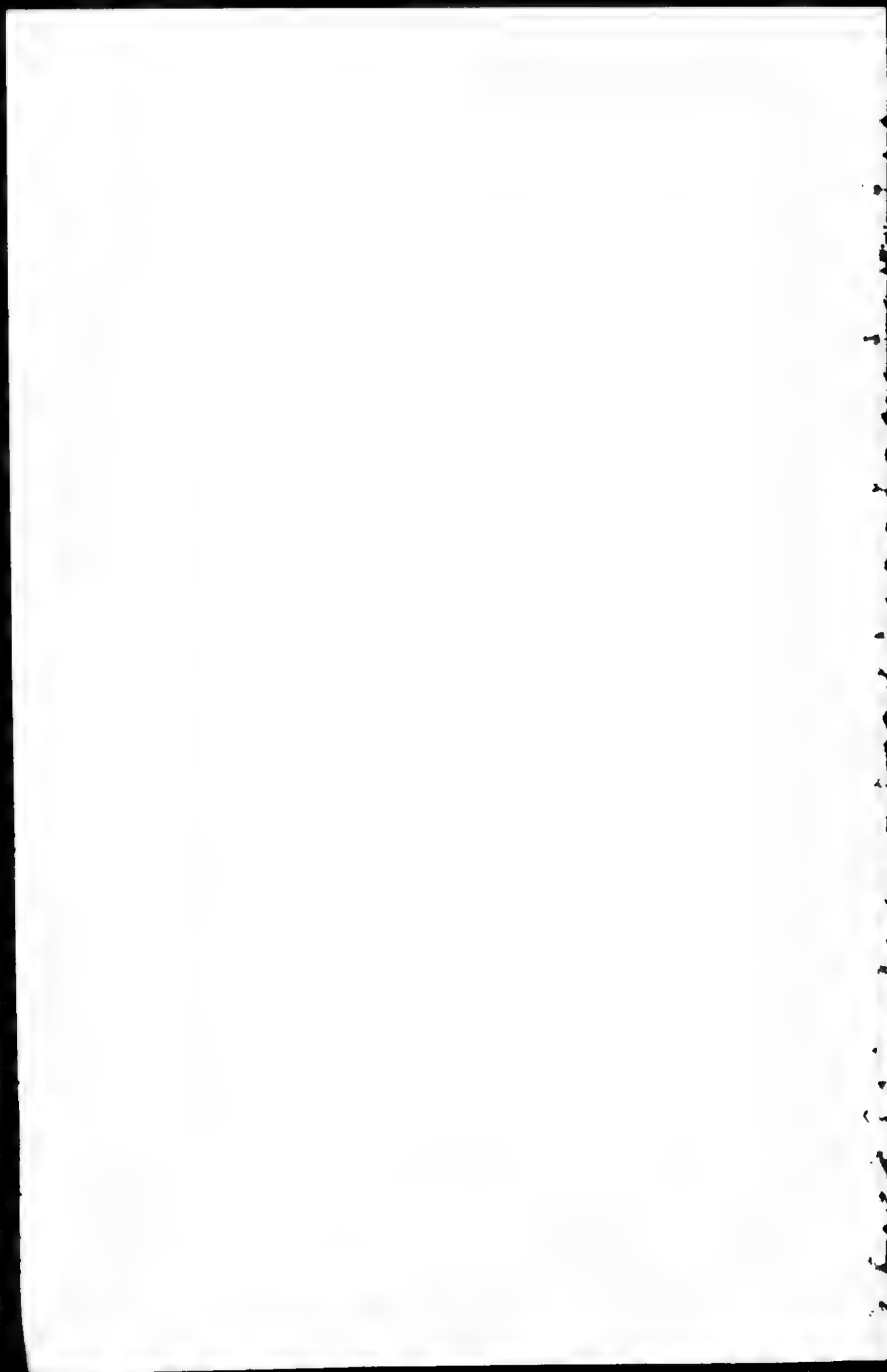
Army Serial Number

Time and place discharged.

Trusting that you will be able to find this information
for me I am,

Yours very truly

/s/ LAWRENCE STURGILL



UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 20031

LAWRENCE STURGILL

Appellant,

v.

JOHN L. LEWIS, JOSEPHINE
ROCHE, AND HENRY G. SCHMIDT
Trustees of the United Mine
Workers of America
Welfare and Retirement Fund

Appellees

Appeal From the United States District Court
For the District of Columbia

REPLY BRIEF FOR APPELLANT

United States Court of Appeals
for the District of Columbia Circuit

FILED JUL 13 1966

Nathan J. Paulson
CLERK

RONALD D. HAGGART
National Theatre Bldg.
Washington, D.C.

BYRON K. WELCH
1366 National Press Bldg.
Washington, D.C.
Attorneys for Appellant

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UNITED STATES COURT OF APPEALS
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LAWRENCE STURGILL

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v.

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Appeal From The United States District Court
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REPLY BRIEF FOR APPELLANT

I

THE CONTENTION OF APPELLEES THAT THE EVIDENCE
SUBSTANTIATES THAT APPELLANT WAS BORN
IN 1897 IS INCORRECT

It must be conceded at the outset of this reply brief that the
brief for the appellees presents a review of much of the evidence which

has been admitted by the court below at the various stages of this case. Anyone reviewing this evidence must conclude that considerable confusion exists as to the correct date of birth of the appellant.

The appellant personally testified that he was born on December 1, 1887. The evidence introduced to refute this testimony by the appellees consists mainly of records obscured by the passage of time and obtained by persons who have long since become unavailable to explain the inconsistencies in these records. By proving that the Veterans Administration records do not show that a Lawrence Sturgill served in the Army during World War I, the appellees would have us believe that the appellant had not reached the age of 60 years when he applied for a pension. They thereby ask us to conclude by certain inconsistencies in the evidence, that appellant has perpetrated a huge deception on the Trustees, United Mine Workers of America Welfare and Retirement Fund.

Despite the confusion in the various evidence presented in this case, one matter of great importance clearly appears. The appellant at the best has been semi-literate all his life and each time he has been required to complete forms and supply information about

his personal statistics, this has been done through an intermediary who asked questions with appellant presumably supplying the answers but incapable of ascertaining if correct information was presented. The appellees now review these documents, and the non existence of certain other records, and without reservations, establish the birth date of appellant.

In the Administrative proceedings which were held concerning the appellant's application for a pension, appellees have never considered the question of appellant's age. They denied the application on the grounds that appellant had not had the required number of years service in the coal mining industry. A lengthy administrative record lead the appellees to deny the pension. When the matter reached the Court the appellees, apparently having concluded that denial of a pension on the ground of lack of the requisite number of years service was improper and would not be sustained by the Court, completely abandoned the finding as to years of service reached after some six years of consideration. When the case was tried some twelve years after the application for a pension was made, appellees had altered their position to that of denial solely on the basis that appellant had not reached the proper age to qualify him for a pension. Instead of the

relaxed and informal procedure possible in an administrative hearing, appellant found that the evidence he could produce was circumscribed by the strict rules of evidence applicable to Court proceedings. The evidence presented, as inconclusive as appellees review thereof shows, was presented to a Judge and not to the appellees as Trustees and led to a denial in the Court below of appellant's right to a pension.

It is not denied that the Trustees are fiduciaries and they, not the Court should have fulfilled their fiduciary duties by giving a complete administrative hearing to appellant based on the criteria set up by the Trust Indenture and the Resolutions enacted pursuant thereto. It is the duty of the fiduciaries, the appellees, to not only protect the settlors of the trust and the trust res but also to protect the beneficiaries such as appellant. It would appear that in this case the appellees are being over zealous to protect the trust res in derogation of the protection to which the appellant is entitled. When it was found that a small part of the trust res could not be denied the appellant on the grounds of lack of service, reason for denial was quickly changed to lack of age. It is interesting to speculate on what ground might have been found to withhold appellant's part of the trust funds if there had been less contradiction in the evidence concerning appellant's age. Perhaps appellant's union membership itself would have been questioned.

II

THE BRIEF FOR APPELLEES ERRONEOUSLY ATTEMPTS
TO DISREGARD THE CRITERIA FOR AGE
QUALIFICATION BASED ON SOCIAL SECURITY
RECORDS AS CONTAINED IN THE RESOLUTION
OF THE TRUSTEES

The terms of Resolution 10 establishing what is proof of eligibility for a pension clearly show that the matter of age is to be verified if possible by the records of the Social Security Administration. There is a further provision permitting appellees as Trustees to require the production of documentary evidence of probative value where the Social Security records do not show that the applicant is old enough to receive a pension. It is quite understandable that such criteria should be fixed as regards age. The age of individuals who were over sixty in 1953 is in many cases very difficult to establish. The conflicting evidence in this case is a striking example of the necessity for relying on a standard such as what is shown by the Social Security records.

The appellees correctly state that the Social Security Administration considered all the evidence before them, and made a judgment that the appellant was born December 1, 1887. Appellees ask that we now distinguish between Social Security Records and Social Security judgments. When the Trustees refer to verification of age by Social

Security Records, what else could they mean but what date of birth does the Social Security record for the individual involved show. Appellees might just have easily stated that the record of this case in the Court below does not include the judgment of that Court. It is appellant's contention that the provisions of Resolution 10 not only contemplated that the judgment of the Social Security Administration is part of the records of that agency but further that such findings should verify the age of pension applicants.

Again, appellant contends that even if it were permissible for the court to undertake an examination into the appellant's age, it should have been bound by the criteria which the Trustees were governed by. Mainly, that the age of the applicant will be verified by the Social Security Records which in this case establish appellant's age at over sixty when he applied for his pension.

III

THE OPINION OF THE COURT RENDERED IN THE
HEARING OF MAY 10, 1965 WAS CORRECT
AND SHOULD HAVE BEEN SUSTAINED.

Despite the voluminous pages which have and still can be written reconsidering the evidence in this case or presenting arguments on the meaning of certain words in resolutions of the Trustees, one

significant and indisputable error exists in this case which demands a reversal of the lower court's judgment.

After the first hearing in this case on May 10, 1965, in which the Court considered evidence relating to appellant's age, the Court announced an oral opinion from the bench finding that the appellant should have been given a pension (1st. Tr. 88-90). The Court stated:

"...I hold that the defense cannot change its theory of the case on facts that have come into the case after it has made its decision. They have got to rest on the record as it was at the time that the decision was made. Accordingly, this affirmative defense that the plaintiff at the time that his case was considered was not at the proper age, I do not think is material to the case." (1st Tr. 88)

However, before the Court signed its findings of fact and conclusions of law, the appellees filed motions seeking further hearing and reconsideration. In substantiation of these motions, allegations were made which amounted to an accusation of fraud. Acting on these allegations on July 17, 1965, the Court granted a new hearing during which further evidence was introduced relating to appellant's age.

In spite of the fact the Court had stated that the new hearing had been granted because of the allegations of fraud made by the appellees, the Court made no findings of fraud to justify the granting of a new hearing. At the very least a justification should have been

found by the Court to overrule its previous decision. If the Court found in the first hearing that the issue of age was not relied upon in the administrative denial of appellant's claim and that it was raised too late as a defense to this suit, thereby finding for the appellant, how could the Court hold a rehearing and retry the case on the issue of age?

The appellees attempts to justify the Court's action by citing a line of cases dealing with the application of Rule 59 of the Federal Rules of Civil Procedure and purportedly standing for the principal that the Court has a right to reopen a hearing to take further testimony, where findings of fact and conclusions of law and judgment have not been entered. In the two leading cases the appellees cite it is noted that the Court had refused to reopen the hearings in question and that the failure to reopen was appealed from. These cases further do not stand for the proposition that hearings should be reopened without good reason therefor. As the Court stated "Of Course, either a judicial or an Administrative hearing may be opened for proper cause." (Emphasis added) North Central Airlines, Inc. v. C. A. B., 281 F.2d 18, at 23, (1960).

The appellees very conveniently ignore the leading case on the

particular issue involved here which is Danti v. Lewis, 114 App. D.C. 105, 312 F.2d 345(1962). The Danti case is an identical suit against the Trustees of the United Mine Workers of America Welfare and Retirement Fund. The identical question was involved, that is, a decision of the Trustees to deny a retirement pension and the District Court's right to accept evidence which was not before the Trustees.

In the Danti case at 349 the Court stated:

"We hold, further, that in this action to review the Trustees' decision...the District Court's duty was to determine whether the material then before the trustees was sufficient to support their decision..."

No matter how much effort is made to rehash and rehash the evidence presented in the two lower court hearings in this case, or to distract from the one and only issue on appeal, the inevitable conclusion must be reached that the District Court was without legal authority to even consider the question of the age of the applicant in the first instance and by doing so it violated the rule established by the Danti case, thereby committing reversible error. Appellant should have received a fair administrative hearing at a time when he was capable of participating in such a hearing and his eligibility should not have been passed on by a judge having considered only the type of evidence admissible in a Court of law.

CONCLUSION

For the foregoing reasons, in addition to those stated in Appellant's Brief, justice requires that this Court enter an order reversing the judgment of the lower court and requiring that the appellees pay to appellant his pension retroactive to the date of his application therefor.

Respectfully submitted,

Ronald D. Haggart
Byron K. Welch
Attorneys for Appellant

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was mailed,
postage prepaid, this _____ day of _____, 1966, to
Edward L. Carey, Attorney for Appellees, 821-15th Street, N.W.,
Washington, D.C.
